

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: P.M.C. v. F.C., 2005 NSSC 135

Date: 20050531

Docket: 1201-52159

Registry: Halifax

Between:

P. M. C.

Petitioner

v.

F. C.

Respondent

Editorial Notice

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

Judge: The Honourable Justice Mona M. Lynch

Heard: March 18, 2004 & May 9, 2005, in Halifax, Nova Scotia

Counsel: Kelvin Gilpin, for the Petitioner
Cameron MacKeen, for the Respondent

By the Court:

Background:

- [1] M. C. has not seen his daughter, X, for over two years. M. C. and F. C. were married on February 15, 1992. They had one child, X C., who is currently fourteen years old. The parties were divorced by a Divorce Judgment dated July 20, 1998. By the Corollary Relief Judgment of the same day, F. C. was granted sole custody of X and M. C. was granted access on Tuesday, Thursday and Sunday each week. The Corollary Relief Judgment incorporated a Separation Agreement dated June 12, 1998. Prior to the Corollary Relief Judgment there had been two interim orders dealing with custody and access.
- [2] Since 2002 M. C. has had various applications before the courts to vary the provisions of custody and access and to find F. C. in contempt for denial of his access with X. F. C., since 2002, has been alleging that M. C. has harassed and threatened both F. C. and X. She has expressed concern about the great anxiety that X has over seeing her father and the safety of herself and her mother.
- [3] F. C. has been found to be in contempt of the court order in relation to access. In October 2003, M. C. applied to vary the access provisions of the

order and in December 2003 F. C. applied for access to be denied. An interim order dated January 29, 2004 granted interim custody of X to M. C. but gave F. C. day to day care and medical authorization.

- [4] The hearing in relation to the applications to vary was held on March 18, 2004 and evidence was taken from Dr. Phyllis Ohm, a psychologist for X, F. C. and M. C.. Dr. Ohm testified that she was seeing X in relation to an anxiety disorder in relation to visiting her father. She had met with F. and X C. but had never met M. C.. F. C. testified to her beliefs that M. C., among other things, was involved in organized crime, in two incidents where she was nearly hit by a vehicle, in the family cat being run over, in tampering with her vehicle and in break and enters and attempted break and enters into her residence. F. C. truly believes her accusations and that M. C. is threatening her safety and X's safety. M. C. denied all of the allegations, expressed concern that F. C. was alienating his daughter and regret over the loss of relationship with his daughter with whom he used to have a good relationship. At the end of the hearing a psychological assessment of the parties and evaluation of parenting was ordered. The court made a referral to the Children's Aid Society of Colchester County in relation to X.

- [5] The assessment from the IWK Health Centre, dated July 28, 2004 expressed great concern for X in her mother's care, and recommended that she be taken into care by child welfare authorities. Concern was expressed over the mental health of both F. and X. The authors of the assessment made a referral to the Children's Aid Society of Colchester County in relation to X. F. C. requested an opportunity to cross-examine the authors and the matter was adjourned for that to take place.
- [6] On November 9, 2004 counsel for F. C. was permitted to withdraw and evidence was heard from the Executive Director of Children's Aid Society of Colchester County. The Director testified that her staff had found that X was not in need of protective services.
- [7] At the time scheduled for the continuation of the hearings on November 18, 2004, F. C. requested an adjournment as her new counsel was not available. The matter was adjourned and an Interim Order was issued granting M. C. interim custody of X with supervised access to F. C.. The trial concluded on May 9, 2005 after cross-examination of the authors of the IWK Health Centre report. At the end of the trial, the parties agreed that X would begin counselling within two weeks and the parties would agree on a counsellor.

Counselling with Dr. Ohm had been stopped by M. C.. The decision on custody and access was reserved.

Issues:

[8] What is the custody and access arrangement that is in the best interests of X C.?

Analysis:

[9] M. C. has had trouble having access with X since 2002, his contact with X has been very limited and he has not seen X in over two years. F. C. wants access denied as she believes that M. C. has been responsible for a number of events in her life and X's life and that he is a danger to them. Although she denies that she discussed her concerns with X, she did indicate in her testimony that she told X in 2003 that they had to move to Truro for safety reasons. She provides absolutely no proof to connect M. C. to these events. I fully accept that there is absolutely no basis for her fears but she has transferred her fears to her daughter, X.

[10] After hearing the evidence in March of 2004, I was so concerned about X that I ordered a psychological assessment of the parties, a custody and

access evaluation and by letter dated March 19, 2004 I made a referral to the child welfare agency in Truro. I received a letter from the agency dated March 29, 2004 acknowledging my referral and a letter of the same date indicating that the matter had been investigated, presenting issues had been addressed and the intake closed.

[11] The recommendations in the assessment prepared for the court by

Assessment Services of the IWK Health Centre were:

1. X C. is a child in need of protection and she should be removed from her mother's care, and taken into the Temporary Care and Custody of the Children's Aid Society of Colchester County.
2. Access between X and her mother be supervised, until such time as F. C. was addressing her mental health issues to ensure that contact would not be emotionally damaging.
3. F. C. participate in psychiatric assessment and treatment to address symptoms of irrational and delusional thinking.
4. X continue in therapy, however the focus of the therapy to deal with the impact of her mother's mental health functioning. A different therapist was recommended as the therapy with Dr. Ohm had treated X's fears as legitimate.

5. Contact with M. C. be contingent on X's progress in therapy.

[12] The authors of the assessment found that M. C. was the parent who could provide the better care for X, but this was not possible due to the entrenched nature of X's beliefs about her father and the degree of alienation. The assessors found that X needed to be removed from her mother and that although X was thriving academically and socially, her emotional and psychological needs were not being met with her mother. If left in her mother's care there was a serious risk that she would experience mental health difficulties and continued emotional harm. They found the environment X was living in was one of fear and apprehension and that X had adopted her mother's belief system about her father and the risk and threat that he poses. They found that F. C. fully holds her belief system as legitimate and has interfered significantly with X's relationship with her father. As a result of F. C.'s beliefs, X has had a great deal of unnecessary anxiety and fear.

[13] One of the authors of the report, Linda MacEachern, acknowledged that removing X from F. C. would be extremely difficult and stressful for X but

that X needs to address her anxiety and work to come to understand the mental health issues of her mother. The treatment that X was receiving was treating the anxiety but not addressing the problems and treating the fears as if they are real – thereby entrenching the fears. Although X is doing well in school and on the surface looks good she is not doing well emotionally. She fears things that are not to be feared and this will cause problems in her inter-personal relationships.

[14] The assessors were so concerned about X's mental health, that they also made a referral on July 20, 2004 to the Executive Director of the Children's Aid Society of Colchester County, recommending that X be removed from her mother's care to protect her from continued emotional harm.

[15] The Executive Director of the Children's Aid Society of Colchester County testified that as a result of the referral from the court, social workers from her agency spoke with Dr. Ohm, X C., and F. C.. As a result of these interviews, the agency determined that X was not in need of protective services and the file was closed. No further action was taken when the referral was received from the IWK Health Centre Assessment Services in July of 2004. M. C. was not contacted.

[16] I must say that it is troubling, to say the least, that the agency which is mandated to protect children in Colchester County virtually ignored the in-depth assessment and recommendations of the IWK Health Centre in relation to X. The assessment prepared by the IWK involved review of material before the court; interviews with F., M. and X C.; home visits; numerous collateral contacts and the psychological assessment of the parties. Based on all of this background information and assessment it was recommended that X was in need of protection due to the emotional damage in the environment in which she was living with her mother. They found at page 48-49:

Mr. C. has been a responsible and loving parent to his children. He and his daughter X had a strong positive attachment at one time, and sadly, this has been significantly contaminated and X is largely alienated from him. X has essentially lost a significant attachment figure in her life due to her mother's mental health difficulties. X has now adopted her mother's belief system about her father and the risk and threat that he poses. The environment created for X as a result of her mother's mental health has been one of fear and apprehension. Ms. C.'s belief that Mr. C. is doing such things as hiring others to run them down in a crosswalk undoubtedly has created a great deal of anxiety for X. Her emotions have been prescribed to her, and her emotional and psychological development are being significantly inhibited.

And later at page 49:

It is most lamentable that this child needs to be removed from the care of her mother, whom she has a significant attachment with. X is thriving academically and socially, but her emotional and psychological needs are not being met in this environment, and there is serious risk that if X continues to remain in her mother's care, she will experience mental health difficulties and continued emotional harm.

Faced with these comments which were based on many hours of interviews, research, testing and checking collateral sources, the agency mandated to protect children found that there was no need to intervene to protect X. They had interviewed F. C. who holds the irrational beliefs, X who has been tainted by her mother's beliefs and Dr. Ohm whose only information comes from X and F. C.. The decision made by the Children's Aid Society of Colchester County is confounding to say the least.

[17] The decision of the Children's Aid Society of Colchester County is particularly troubling in light of s. 22(2)(f) - (j) of the *Children and Family Services Act*:

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;

(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development 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 condition;

[18] It was clear from the assessment that the only services or treatment that X was receiving was entrenching her fear of her father and not assisting in the cause of her anxiety. However inexplicable, I am left with a situation where the child welfare authorities have refused to intervene. This leaves me with a choice between placing X with her father of whom she is terrified or leaving her with her mother who is causing her emotional harm. I am supposed to decide which of these, my only two options, is in the best interests of X. After the interim order granted custody of X to M. C., Mr. C. has tried to exercise access with X. With the assistance of police officers, Mr. C. attended at F. C.'s home and attempted to see X. X refused to see Mr. C..

[19] I cannot find that it is X's best interest to take her from a place she feels safe and put her with someone which will cause her great fear and anxiety. She is fourteen years old and I doubt she would go or stay if I made such an

order. The option proposed by the IWK Health Centre allowed X to feel safe in an neutral place while she received counselling to deal with her mother's mental health and to reunite her with her father. This is the option that I find would be in X's best interest. However it is not available to me.

[20] M. C. is to be commended for persevering in his efforts to continue a relationship with X. With all of the road blocks that have been put in his way, many would have given up. I accept that if he thought it was in X's best interest for him to back off, he would do so. That would not be in X's best interest. His continued efforts show the deep concern and love that he has for X.

[21] The parties have agreed that X will attend counselling and I have directed that the counselling be on the understanding that there is no rational basis for the anxiety and fear in relation to her father. Hopefully this will help X recognize that her anxiety has been due to her mother's mental health issues and help her realize that her father is not someone to fear.

Conclusion:

- [22] The parties shall have joint custody of X. As much as this concerns me, the primary residence of X shall be with F. C..
- [23] X will continue in counselling and the July 2004 report from the IWK Health Centre will be provided to that counsellor. Access between M. C. and X will be as recommended by X's counsellor.
- [24] As a result of the interim custody order granting him custody of X, M. C. was able to stop X's counselling which was further entrenching her fears. It is important that the most responsible parent have control over the decision-making. I will therefore grant to M. C. all decision- making power and consent authority for medical, mental health, and educational decisions in relation to X. F. C. can consent to emergency medical treatment for X. F. C. is to cooperate and use her best efforts to ensure that X attends the counselling sessions with the counsellor.
- [25] The matter is to be reviewed in six months. One week prior to that time M. C. shall ensure that there is a report and recommendation from X's counsellor filed with the court and provided to F. C..

J.