IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Children's Aid Society of Cape Breton-Victoria v. R.J., 2007 NSSC 198

Date:2007-06-21
Docket: SFSN 47135
Registry: Sydney

Between:

Children's Aid Society of Cape Breton-Victoria

Applicant

v.

R.J.

Respondent

Judge:	The Honourable Justice Darryl W. Wilson
Heard:	June 14, 2007 and June 15, 2007 at Sydney, Nova Scotia
Oral Decision:	June 15, 2007
Written Reasons:	June 22, 2007
Counsel:	Robert Crosby, Q.C., Counsel for Agency R.J., self-represented Lisa Fraser-Hill, Counsel for Guardian, R.M.

By the Court:

[1] This proceeding concerns the care and custody of the child "C " J. born January .... 1993 (*editor's note- date removed to protect identity*). He is presently 14 years old.

[2] The Children's Aid Society of Cape Breton-Victoria has applied for a Permanent Care and Custody Order with a provision for access. "C"' mother, R.J., opposes the application and wishes "C" be returned to her care or alternatively to the care of her mother and eventually returned to her care with additional services being provided by the agency.

[3] This is a Review Hearing. There are a number of sections under the *Act* that the court must consider in making a determination. The sections of the **Children and Family Services Act** that are relevant in this application include Section 46(5) which states:

> s. 46(5) On the hearing of an application for review, the court may, in the child's 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;
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> (b) order that the disposition order terminate on a specified future date; or
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> (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.

[4] The period of duration for a Temporary Care and Custody Order in this circumstance is twelve months (section 45(2)(c)). "C" has been in the temporary care and custody of the agency pursuant to a Disposition Order since November 14, 2006.

[5] Section 46(4) states:

> s.46(4)Before making an order pursuant to subsection (5), the court shall consider
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> (a) whether the circumstances have changed since the previous disposition order was made;
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> (b) whether the plan for the child's care that the court applied in its decision is being carried out;
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> (c) what is the least intrusive alternative that is in the child's best interests; and

(d) whether the requirements of subsection (6) have been met.

[6] Section 46(6) provides:

> s. 46(6) Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 46

[7] Although the court has additional time to make another Temporary Care and Custody Order or a Supervision Order placing the child in the care of his mother or grandparents, the court must be satisfied the circumstances justifying the earlier Temporary Care and Custody Order are unlikely to change within the remainder of the applicable maximum time period.

[8] Section 42(2) states:

> s.42(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.

[9] I have considered Section 13(2) which states:

s.13(2) Services to promote the integrity of the family include, but are not limited to, services provided by the agency or provided by others with the assistance of the agency for the following purposes:

(a) improving the family's financial situation;

(b) improving the family's housing situation;

(c) improving parenting skills;

(d) improving child-care and child-rearing capabilities

(e) improving homemaking skills;

(f) counselling and assessment;

(g) drug or alcohol treatment and rehabilitation;

(h) child care;

(I) mediation of disputes;

(j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;

(k) such matters prescribed by the regulations. 1990, c. 5, s. 13

[10] "C" is fourteen years of age. He had been living with his mother until June of 2006 when he was taken into the care of the agency. The plan filed by the agency described the various services they provided to "C" and his mother over the years. Some of those services are of a passing nature while some are of a more permanent nature. There certainly is an acknowledgment that "C"' behavior have been difficult to manage and have become more difficult as he grows older. There are times when Ms. J. needed respite and required the agency's assistance in managing his behavior. More intensive services recently included the placement of mentors in the home. In more recent years there has been additional services including a parental capacity assessment as well as an assessment from the Nova Scotia Initiative on Sexually Aggressive Youth, East Coast Forensic Review Board, Mental Health Services, and protection services of the agency. Previously there had been Voluntary Care Agreements and in-home support.

[11] Ms. J. takes the position that the most productive services were the introduction of mentors into the home. Ms. J. stated that “C” did not get into trouble when the mentors were in the home. She feels that if those services resume, “C” could be returned home and reside safely with her without risk of harm to himself or others.

[12] Section 2(1) states:

> s. 2 (1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.

[13] Section 3(2) which sets out the factors for the court to consider:

> s.3(2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:
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> (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;
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> (b) the child's relationships with relatives;
>
> (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;

(d) the bonding that exists between the child and the child's parent or guardian

(e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;

(f) the child's physical, mental and emotional level of development;

(g) the child's cultural, racial and linguistic heritage;

(h) the religious faith, if any, in which the child is being raised;

(I) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;

(j) the child's views and wishes, if they can be reasonably ascertained;

(k) the effect on the child of delay in the disposition of the case;

(l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;

(n) any other relevant circumstances.

[14] “C” has been diagnosed with attention deficit hyperactive disorder, pervasive development disorder not otherwise specified, and moderate mental retardation. He has medical issues which include a speech impediment, and hand tremors. Some other non-mental health issues include school difficulties, inter-personal problems, problems in the home, legal system, child/parent issues, and issues with peers. “C”’ overall level of functioning was deemed to be 35 out of 100. “C” is a 14 year old boy with the mental capacity of a five to seven year old. As a 14 year old he wants to have independence but he does not have the mental capacity for his chronological age. As he gets older it is more difficult to control his behaviors. When “C” was about nine, he began to wander and police were called to locate and return him home. Police began receiving reports of “C” damaging property and exhibiting aggressive and sexual behaviors. Now “C” is before the youth court. On March 18, 2006 he was charged with assault, s. 267. On March 20, 2006 he was charged with uttering threats s. 264.1(1)(a) and engaging in an indecent act with intent to offend or insult s. 173(1)(b). He was referred for a competency assessment and initially was found unfit to stand trial. He was placed at the IWK. After a further period of time he was reassessed and

deemed fit to stand trial. He is currently waiting to have his trial date set. He continues to reside at the 4-South Unit at the IWK which is an assessment unit. Although his assessment is complete he is receiving treatment by the staff on that unit. The staff do not know how long he will be there. When "C" returns to court he maybe found guilty or not guilty of the offense. If he is found guilty the youth court will determine his sentence. If he is found innocent then he will be returned to the community and depending on the decision of this court returned to the care of his mother or placed in the care of the agency. If "C" is found not mentally competent then he may be returned to the IWK until they review his circumstances by the East Coast Review Board. They may decide to maintain "C" in a place of treatment for a period of time and then eventually he maybe released into the community. "C"' future care and custody once he is released from the youth court proceedings has not been completed.

[15] The court heard evidence on June 14 and 15, 2007 from four witnesses on behalf of the agency and two witnesses on behalf of Ms. J. including Ms. J. herself.

[16] The first witness was Doctor Landry. He is a psychologist and prepared a parental capacity assessment with respect to Ms. J.. Doctor Landry also testified.

His report was tendered as an exhibit. His conclusions mirror the evidence he gave in court. I repeat in detail his conclusions because they provide an accurate recap of the child and mother's circumstances.

> The assessment was requested to determine particular psychological issues related to Ms. J.'s difficulties learning appropriate management strategies to deal with "C". As noted above, "C" has presented with a wide variety of challenges and needs since his preschool years. It was noted that he was diagnosed with various disorders including Attention Deficit Hyperactivity Disorder, Pervasive Development Disorder, and Mental Retardation. In addition, he was reported to be very oppositional . Before his recent hospitalisation, "C" had a variety of supports in the community including mentors in place to stabilize his behavior and assist Ms. J. in managing his behavioral challenges. While "C" is described as affectionate and loving he has special needs that are significantly greater than other children of similar age and will likely tax the resources of any parent who must care for him. As noted above children with the needs such as "C" often have limited internal control over their behavior because some of the psychological mechanisms to inhibit inappropriate behavior are poorly developed. Characteristics such as implusivity, hyperactivity, difficulties with empathy, interpreting the social cues of others and the limited intelligence contribute to limited self-control. In situation such as these, the individual often requires very consistent environmental controls to inhibit acting out.
>
> There are features of Ms. J.'s environment that may make it more difficult for her to cope with the children's challenging behavior. She perceives that she has little practicial social support and is somewhat socially isolated. Ms. J.'s reports that she experienced significant stress associated with her role as a parent, and, in addition, that she attributes significant stress to the behavioural difficulties of her son, "C". These feelings of stress are undoubtedly exacerbated by her experience as "single" parent with inconsistent practical support. There have been services in the home to help Ms. J. parent more effectively and she continues to have difficulty responding in a consistent fashion.
>
> These environmental factors may make it more difficult for Ms. J. to cope with challenges given her individual issues identified in the assessment. First, Ms. J. presents with cognitive abilities that are in the Borderline range of ability. This is

indicative of significant intellectual impairments when compared with her peers. In addition, even when compared with her cognitive abilities, Mrs.J. has even more difficulties remembering new information when presented verbally. Given Ms. J.'s persistent learning difficulties, she has developed deeply rooted dependency needs and may look to others to help her cope with difficulties. This is especially problematic given her subjective perception of limited practical support. This dynamic may contribute to her experience of increased stress and anxiety. In addition, Ms. J. appeared to have some difficulties coping with stress as evidenced by her reactions during the administration of the Wechsler Adult Intelligence Scale-Third Edition.

There is no doubt that Ms. J. has a great deal of strengths as a parent and has provided the children with love and attention. This was evident in her interactions with her daughter that were obviously caring and loving. She also has the ability to provide for their basic needs. However, given the significant needs of "C", her relative practical isolation and her own individual cognitive and personal issues, it is unlikely that she would have the requisite parental capacity to deal with the needs of "C" as he gets older. Consequently,

1. It is recommended that "C" be placed in the permanent care of the Children's Aid Society.

2. Given "C"' attachment to his mother, a similar pattern of access would be recommended to prevent any exacerbation of his mental health difficulties.

3. Ms. J. may benefit from some supportive counselling to deal with the issues related to any changes in the custody of the children.

4. Several recommendations for "C" were formulated in the report provided by Harpreet Aulakah, Psychologist (Candidate Register). It would be beneficial to both "C" and his mother, Ms. J., if "C" was provided with a community placement in the local area.

[17] Doctor Harpreet Aulakah is a clinical psychologist,. She was requested to prepare a reassessment evaluating "C"' risk for violence and sexual aggression. She provided a Forensic Rehabilitation Risk Assessment & Treatment Report which was filed as **Exhibit #3.** She testified at the hearing as well. A previous sexual aggressive risk assessment was conducted by Doctor Boutilier in March 2006 when "C" was living with his mother. This current assessment was requested because a year had passed since the last assessment and "C" was residing in a different environment. It was prepared in order to provide guidance to the clinical staff on 4-South in dealing with future treatment of "C" as well as to provide some guidance to future care givers should "C" be removed from 4-South. The report was limited in that it only dealt with "C"' circumstances on 4-South which is a very controlled setting with a high staff to patient ratio. "C"' risk to engage in aggressive and sexualized manner in the future will depend on the setting in which he resides and it will be necessary to re-evaluate his circumstances at that time. The intervention recommendations of Dr. Aulakh were as follows:

> 1. THAT Inteventions continue to target increasing "C"' adaptive functioning skills with the goal to increase "C"' independence and increase his ability to self-care.

2. THAT Staff continue to teach “C” how to behave in a non-aggressive fashion and in non-sexualized manner. To date the staff have been working well with “C” around some of these issues in a developmentally appropriate fashion and this work should continue with “C”. When “C” is placed in the community, it will be important to ensure that this teaching continues.

3. THAT continued efforts should be made to have “C” participate in structured pro-social youth activities (e.g. team sports, hobbies) to assist him in developing his social skills and forming healthy positive peer relationships.

4. THAT “C” would continue to benefit from appropriate adult role models in the forms of a mentors/youth alternative worker. This would also help with supervision of pro-social activities outside of his place of residence.

5. THAT In the 4-South setting “C”’ learning needs are being met appropriately; however, “C” has significant learning challenges and as such when he placed in the community, he should either get individual assistance or be placed in a school program which with a smaller student to teacher ratio with additional supports. In addition, it would be valuable to provide a copy of the recent psycho-educational assessment to the school and or teachers who work with “C”.

6. THAT Given his complicated mental health presentation, “C” should continue to be followed by psychiatrist for his medication needs even when released to the community.

7. THAT “C” have no unsupervised contact with children under the age of twelve years until his risk for sexual re-offending is judged to have been significantly reduced by clinicians who work with “C”.

[18] This risk assessment had two aspects; risk to sexually re-offend and risk for future violent offending. It was the conclusion of Dr. Aulakh that “C” presented a low risk of sexually re-offending in the context of his current setting when

appropriately supervised. Also the likelihood that "C" will commit a violent offense if no efforts are made to manage his risk in the 4-South setting is also in the low range. However at page 21 of her report Dr. Aulakh states:

> It is important to note that at present, "C" does not have adequate skills to manage his own behavior on his own, hence, adult supervision will continue to be important when "C" is in the company of children or vulnerable youth until he has gained the skills to adequately manage his maladaptive behaviors.

[19] Ms. J. thought that Dr. Aulakh said that with services in the community "C"' risk could be managed but my recollection of Doctor Aulakh's evidence is that the setting where "C" is placed is very important. It was her opinion that the risk would probably be a lot greater if "C" was in the community than if he was just on the 4-South setting.

[20] The evidence is overwhelming that "C" is a young man with very special needs. He has difficulty controlling his behavior. He will require supervision on a 24/7 basis. It will be difficult for anyone to appropriately manage "C"' behavior.

[21] The focus of this hearing was the maladaptive behaviors that “C” presents and the risk that he presents to himself and to others because of his level of emotional and physical development. I agree with the conclusions of others that Ms. J. tends to minimize these behavior and the risks they present to “C” and others in the community.

[22] “C” is presently residing on 4-South at the IWK in the care of people who are trained to deal with youth who present risky behaviors. The placement is necessary in order to appropriate manage “C”’ behavior. Returning “C” to the care of his mother or family would increase the risk of “C” aggressive and sexualized behaviors not being appropriately managed.

[23] Ms. J. is not willing to accept that “C” behavior may present a risk to others. The overwhelming evidence of the experts dealing with him indicate that “C” does present with risky behaviors and that they have to be managed on a regular basis. He has to be provided with consistent a regime in order for any improvements to be made. Even with assistance any improvements in his functioning that he makes are not likely to enable him to live independently or in the future. He will require supervision and assistance in his daily living.

[24] Ms. J. has an infant child living at home with her. Given the evidence and opinions of Dr. Aulakh and Dr. Landry this child will be placed at risk of physical harm if "C" is returned to the care of his mother.

[25] The court is aware of the close attachment and bond that exists between "C" and his mother. If "C" is placed in the care of the agency his future placement maybe outside of Cape Breton. Because of the close bond the best placement for "C" would be close to his family. The agency is having a difficult time finding an appropriate placement for "C" in Cape Breton and Nova Scotia given his unique developmental needs and behavioral difficulties.

CONCLUSION:

[26] Having considered all the evidence, including some of the evidence previous summarized as well as the preamble to the Act, I find that Ms. J. certainly loves "C" and wants to care for him; there is an obvious bonds that exist between Ms. J. and "C". However, I find that "C" has educational, mental, emotional and behavior needs that are compromised. Ms. J. is not able to provide the appropriate care or treatment to meet those needs. I accept the assessment of Doctor Landry

that given Ms. J. own feelings of isolation, her limited cognitive and personal issues, continuity of "C"' care would be compromised if he was returned to her care. It would have a detrimental effect on his well being and development. The degree of risk that justified the finding that "C" was found in need of protection still exists at the present time. Services have been put in place to assist Ms. J. and to promote the integrity of the family. These services are not adequate to protect "C" from substantial risk of physical or emotional harm.

[27] I have considered the factors which lead "C" to be in need of protective services as well as the previous court orders and the failure of the services that have been implemented and I conclude that the circumstances justifying an order for removal of him are unlikely to change within a reasonable time limit based on his age. I do not think it is possible for "C" to be placed safely with a relative to have the risk factors reduced.

[28] I consider the agency plan to be in "C"' best interest because the risk of substantial harm will be better managed if "C" is placed in the agency care than in Ms. J.' care.

[29] Placement of a child in the care of the agency is a serious consequence. The agency has met that burden in this case.

[30] "C" is at substantial risk of physical or emotional harm. Ms. J. is unable to overcome the risk factors which lead to these findings and, therefore, "C" continues to be in need of protective services. "C" can not been returned to his mother's care and be adequately protected. It is not possible to place him with a relative.

[31] It is in his best interest to be in the permanent care of the agency. There should be a provision for access given "C"' age, the unlikelihood that he's going to be placed for adoption and the special bond that exists between "C" and his mother.

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Justice Darryl W. Wilson

Sydney, Nova Scotia