FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. L.R.*, 2015 NSFC 11

Date: 2015-07-30
Docket: FTCFSA No. 092304
Registry: Truro

Between:

Minister of Community Services

Applicant

v.

L.R.

Respondent

Restriction on Publication: Pursuant to s. 94(1) of the *Children and Family Services act,* S.N.S. 1190, c.5.

Judge:	The Honourable Judge Jean Dewolfe
Heard	June 23, 2015 and July 13, 2015, in Truro, Nova Scotia
Written Decision:	July 30, 2015
Counsel:	Sarah Lennerton, for the Applicant Robert Moores, for the Respondent

By the Court:

Introduction

[1] This is an application by the Minister of Community Services for permanent care and custody of two children, K. who is almost ten and D, who is almost two. The Respondent L.R., is their mother. Neither child's father has been involved in the lives of these children.

Background

[2] L.R. has an extensive history with child protection relating to these children as well as her two older sons. Her oldest son is now an adult, and her second oldest son resides with L.R.'s mother. L.R. was very young when she had her first child. Her first child protection involvement was over 20 years ago, with consistent involvement since 2001 relating primarily to her alcohol use. For a number of years she engaged in voluntary services to address issues of parenting and alcohol use.

[3] In 2010, following referrals as to L.R.'s use of alcohol and aggressive, neglectful parenting of her two sons at that time (K. and his older brother B.), a

protection proceeding was commenced. The children were placed with family and the proceeding was terminated.

[4] In December 2001, L.R. overdosed on pills and alcohol while K. was present without supervision. His grandmother, with whom he lived, agreed to seek custody of him.

[5] In 2012, following reports that K. was again residing with L.R. without Agency approval, the Agency opened a file for voluntary services. L.R. continued to receive voluntary services in relation to alcohol throughout 2012 and 2013.

[6] In September 2013 the Agency commenced a protection proceeding seeking a supervision order with regards to K. due to L.R.'s alcohol use. In September 2013 D. was born. The Minister commenced another proceeding regarding D. in October 2013 seeking and receiving a supervision order.

[7] L.R. participated in a Parental Capacity Assessment prepared by Dr. Jolaine States in 2013. In her report dated December 31, 2013, Dr. States expressed concern as to the impact of alcohol use on L.R.'s parenting, the chronicity of her alcohol usage, and her apparent lack of insight. In her opinion, L.R. could adequately parent the children if she was sober, but that if she relapsed, the Agency should consider seeking permanent care of the children.

[8] In June 2014, the proceedings were terminated.

The Current Proceeding

[9] On July 30, 2014 the Agency received reports that L.R. was drinking and had assaulted her children. The police had been called and L.R. had been charged with assaulting K. The Agency removed the children from L.R.'s care, and placed them together in a foster home. At that time K. was almost nine, and D. was ten months old.

[10] The Agency very quickly decided to seek permanent care and custody of K. and D. They had previously provided extensive services to L.R., i.e. two parental capacity assessments, family support work, an addictions assessment and counselling. They had just terminated a lengthy period of supervision the previous month, and had concerns as to L.R.'s alcohol recidivism. The Agency felt that no meaningful change had occurred and no further services could alleviate their protection concerns. Therefore, in light of Dr. States' recommendations, the Agency decided to seek permanent care.

[11] No services other than a hair follicle test were offered to L.R. in this proceeding. L.R. has also had supervised access to the children. L.R. voluntarily

attended at Addiction Services in October 2014 and has seen an addictions counsellor since that time.

Evidence

The Minister's Evidence

[12] Much of the Minister's evidence was admitted in the form of reports and affidavits entered by consent from both the current proceeding and the previous proceedings. These materials included a Parental Capacity Assessment prepared by Diana Robichaud-Smith in October 2010.

[13] The evidence of L.R.'s past child protection proceedings is particularly concerning. When drinking, L.R.'s parenting was neglectful and inadequate. Each time services were offered and sobriety was obtained, yet inevitably L.R. relapsed. This has caused great disruption for all of her children.

[14] The Parental Capacity Assessment prepared by Diana Robichaud-Smith in October 2010 related to L.R.'s parenting of K, and his older brother B. B. was described as "parentified", a role reversal between parent and child (p.27, Tab 12, Exhibit 4), due to his mother's alcohol use. He felt responsible for the physical and emotional well-bring of mother and younger brother K.

[15] The Minister also submitted expert reports, entered by consent: a report from Carolyn Scott, a psychologist who had worked with L.R. in 2013 and 2014; a report from Francine Deveau, an occupational therapist who examined D.; two reports from Tamara Zann-Roland, a therapist who worked with K. in 2014-2015; and two reports from Dr. Marilyn MacPherson, a pediatrician who has examined D.

[16] Carolyn Scott's report was dated January 2014. She noted that L.R. had reported (at page 2):

> "…long term difficulties related to establishing stability in terms of long term sobriety and healthy relationships including friendships as well as intimate partner relationships. In addition… problems pertaining to depression and anxiety that are also long term in nature. (L.R.) indicated that it is difficult for her to make a commitment to remain sober from a long term perspective as the future seems uncertain…"

[17] Dr. Jolaine States was qualified by consent to provide expert opinion in the area of the preparation of Parental Capacity Assessments. Dr. States testified that although her Parental Capacity Assessment was approximately one and a half years old, she would consider that it would still be as accurate as it had been in December 2013.

[18] Dr. States related that at the time of her assessment, L.R. had self-reported that she had maintained sobriety for 11 or 12 months and that she had done this

essentially without treatment. In Dr. States' opinion, given the chronicity of L.R.'s alcohol issues and her self-reported mental health concerns, L.R. would require treatment before she could be successful in maintaining long term sobriety. Treatment would have to include extensive individual counselling with a therapist who had addictions expertise, and participation in AA.

[19] Dr. States was asked if L.R.'s reported sobriety since September 2014 was indicative of long term sobriety. Dr. States noted L.R.'s past attempts at sobriety followed by binge drinking, and expressed her opinion that unless sobriety was accompanied by changes such as extended engagement in therapy, progress in terms of insight into her alcohol issues, and attendance at AA or other addictions education counselling, that nine months abstinence would not be indicative of L.R.'s ability to maintain sobriety.

[20] Dr. States was also asked as to the effect of L.R. taking "antibuse". She expressed her opinion that, taking antibuse alone without treatment is not a cure for alcoholism, and would not prevent L.R. from relapsing.

[21] Glenda Morrissey was qualified to give expert evidence in the area of addictions assessment and treatment. She testified and provided a report dated April 15, 2013, in which she expressed the opinion that L.R. had an alcohol

problem, and that she appeared to be in denial as to the severity of her alcohol problem. She stated (at p.9):

> "She (L.R.) does not seem to be aware that treating ones alcoholism is ongoing. (L.R.) described having stopped drinking for a 6 month period and participated in counselling and groups, as well as AA meetings. However, she resumed drinking following her participation in these programs and is no longer attending AA meetings. Clearly (L.R.) is not treating her alcoholism."

[22] Ms. Morrissey recommended, among other things, participation in the 3 week "Making Changes" program, out-patient substance abuse counselling, a Relapse Prevention Program and regular attendance at AA meetings.

[23] In her testimony, Ms. Morrissey expressed the opinion that an alcoholic cannot stay sober on her own and her belief that attendance at AA would be an essential part of L.R.'s treatment. She also recommended participation in a "12 Step" maintenance program. She testified that taking antibuse is not effective on its own.

[24] Commenting on L.R.'s nine months of sobriety, Ms. Morrissey stated that even if an individual gets sober, it is necessary for them to do the "inside work" and to have someone to help them through the denial which is a part of being an alcoholic. In her opinion, counselling which is based on self-reporting would not constitute treatment for an alcoholic.

[25] Finally, Dr. States was asked as to whether L.R. endorsing/posting a number of "funny" posts on Facebook regarding drinking alcohol caused her concern. Dr. States expressed the opinion that it appeared that L.R. was "emotionally engaged" with alcohol and those who drink alcohol, and this led to a concern that as her stress increased she could "fall off the wagon".

[26] Three Agency employees were cross examined on their respective affidavits.

[27] Child in care worker, Holly White, testified that K. had "shut down" in counselling. He refused to discuss the incident which had brought him into care. He worried about his mother and whether he would be blamed for what had happened. Ms. White testified that both children would often become upset at or after access.

[28] Rachelle Sweeting, the long term protection worker, testified that L.R.'s work with Addiction Services since October 2014 had not changed the Agency's decision to seek permanent care. She noted that L.R. had seen Mr. Casselman in the past, and only appeared to take steps to deal with her abuse of alcohol when the Agency was involved. Ms. Sweeting indicated that L.R.'s hair follicle test in August 2014 was negative despite her self-report of drinking in July 2014. She testified that the Agency offered L.R. no services as they felt that, based on history

and the failure of services in the past, no services could assist L.R. in maintaining long term sobriety.

[29] Shalyn Murphy, adoption social worker, provided an affidavit wherein she testified that access orders post permanent care would reduce the pool of "third party" prospective adoptive homes for the children.

Respondent's Evidence

[30] Charles Casselman, a registered social worker and therapist with Addiction Services, appeared for the Respondent. He testified that he had seen L.R. on a number of (approximately six) occasions since October 2014. His therapy was based on self-reports and observation, and was supportive in nature. He had recommended that she participate in individual counselling, see her doctor regarding an antibuse prescription and attend the "Healthy Lifestyles" program which offers supports and skills for those battling addiction. He reported that L.R. did not wish to attend AA, and was relying on the support of friends who had maintained sobriety. She had attended the "Healthy Lifestyles" group on two occasions and was taking antibuse. L.R. did not seek an appointment with him between February 25, 2015 and May 13, 2015.

[31] L.R. testified that she had posted thousands of posts on Facebook, and only 11 related to alcohol. She denied being part of a drinking "subculture". She testified that antibuse had helped her greatly and reduced the pressure to drink. She was not participating in AA or individual counselling beyond Mr. Casselman, and relied on friends for her support.

Law

[32] This application is made pursuant to the *Children and Family Services Act* ("the *Act*").

[33] The Court is required to make a disposition that is in the child's "best interests": S. 42(1). The factors which the Court must address in reaching this determination are set out in 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:
>
> (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 the family;
>
> (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;

(i) the merits of a plan for the child's care proposed by an agency, including 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 care;

(l) the risk that the child may suffer harm through being removed, 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 circumstance."

S. 42(2) provides:

"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 failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child."

S. 42(3) states that;

"Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbor or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person."

S. 42(4) provides that:

> "The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably unforeseeable time not exceeding the maximum time limits based on the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. *1990, c.5, s.42*"

[34] The Minister must prove on a balance of probabilities that there continues to be a substantial risk that the children will suffer harm as per Section 22(2) of the Act.

[35] The test which must be applied is not whether other plans for the child will provide the best parenting, but rather whether the parent can provide "good enough" parenting without subjecting the children to a substantial risk of harm.

Issue

[36] This Court has four options in the instant case:

1. Return the children to L.R.'s care without supervision.
2. Return the children to L.R's care under supervision.
3. Maintain the children in temporary care for a further period of time.
4. Order permanent care.

[37] The issue before this Court is which option is appropriate and in the children's best interests.

[38] The Statutory timelines in this matter have not expired. However, this Court is prepared to make a final determination at this time. I refer to **NS Minister of Community Services v. LLP, 2003 NSCA1**, at para. 31.

> "The Act does not require a court to defer a decision to order permanent care and custody until the maximum statutory time limits have expired. The direction of s. 46(6) of the statute is to the opposite effect."

[39] In the instant case, lengthy previous proceedings had just terminated a month prior to the commencement of this proceeding. K. and D. have been the subject of Court proceedings under the *Act* since September 2013, almost 2 years.

[40] L.R. has had extensive, continual Agency involvement since 2001 with her alcoholism as the primary presenting problem.

[41] K.'s young life has been disrupted repeatedly and negatively affected by L.R.'s struggle with alcoholism. Evidence of L.R.'s past parenting of B. exhibits a similar pattern.

[42] This Court accepts the uncontroverted evidence of Dr. States that these two young children require stability and that L.R. cannot provide adequate parenting unless she maintains sobriety.

[43] This Court also accepts Glenda Morrissey's uncontroverted testimony that the counselling that L.R. has received from Addiction Services since October 2014 is not sufficient "treatment" so as to enhance L.R.'s likelihood of maintaining sobriety.

[44] I do not accept L.R.'s evidence that her work with Mr. Casselman, her use of antibuse and her support from friends is sufficient to allow her to be able to maintain sobriety in the long term. Her attendance with Mr. Casselman has not been extensive and does not constitute the "therapy" as specified by Dr. States.

[45] In addition, L.R. has not attended AA or a comparable program. She testified that AA was not for her, and that listening to other alcoholics was, in effect, a "trigger" for her. She said she relied instead on the support of friends. However, it was not clear as to how her friends assisted her in maintaining sobriety.

[46] I have no evidence that she has achieved sufficient insight into her alcohol issues and the significant impact it has had on her parenting. She says that her children are the motivation for her to maintain sobriety, however, this motivation has not worked, repeatedly, in the past. This Court is not prepared to sacrifice the safety and security of these two young children to give L.R. another "chance".

[47] Based on the evidence before me, I find that the risk of physical and emotional harm to these children would be significant if the children were returned to L.R.'s care.

[48] Therefore, K. and D. will be placed in the permanent care and custody of the Minister.

[49] There are no special circumstances so as to justify access post permanent care, and the Minister is planning to place these children permanently, for adoption. I find that access would impede the children's opportunity for a permanent placement. Therefore there will be no access except for a final visit as arranged by the Agency.

Jean Dewolfe, JFC