FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. H.L.,* 2015 NSFC 10

Date: 2015-06-26
Docket: FKCFSA No. 080725
Registry: Kentville

Between:

Minister of Community Services

Applicant

v.

H.L. and A.P. Respondents

- And -

J.L. and H.L. (Sr.)

Respondents

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

Editorial Notice:	Identifying information has been removed from this electronic version of the judgment.
Judge:	The Honourable Judge Jean Dewolfe
Heard	June 8, 2015, June 9, 2015, June 12, 2015, and June 15, 2015, in Kentville, Nova Scotia
Written Decision:	June 26, 2015
Counsel:	Sanaz Geramie, for the Applicant, Minister of Community Services Michael V. Coyle, for the Respondent, H.L. A.P., appearing without counsel Claire Lavasseur, for the Respondents J.L and H.L.(Sr.)

By the Court:

Introduction

[1] This is an application for permanent care and custody of four boys, ages four and a half, seven and a half, almost ten, and almost 11. Their parents are A.P., and H.L. ("the parents"). The parents, along with the maternal grandparents, H.L.(Sr.) and J.L. ("the grandparents") are the Respondents. All Respondents seek the return of the children to the parents' care, or in the alternative to the grandparents' care. The grandparents also propose in the alternative, that the oldest child be placed in their care. The grandparents have filed a *Maintenance and Custody Act* application for custody of the four boys which has been heard concurrently with the Minister's application. The Respondents seek access if any or all of the children are placed in permanent care.

[2] H. L. and her parents were represented by counsel throughout. A.P. fired his counsel in April 2015. He represented himself at this hearing. His position is supportive of H.L. and her parents' respective plans. A.P and H.L continue to live together, and H. L's plan is that she and A.P. will co parent the children.

Background

[3] The parents have a long child protection history, beginning in 2007 when their oldest child was two and a half. A.P. has had prior involvement with respect to his older children and a former partner. The Agency has received 28 referrals with respect to these children since 2007 on a wide variety of concerns, including physical discipline and verbal abuse by the parents, lack of supervision, neglect, the children's' behavioural problems and poor school attendance. The parents disputed most if not all of the reported concerns.

[4] The children have been removed from their parents' care on two occasions prior to this court proceeding. From November 2008 to October 2009 the three older children were placed in the care of the grandparents subject to supervision of the Agency. They were then returned to the care of their parents under supervision until July 2010. During the 2008-2010 proceeding H.L. participated in family support work and made sufficient progress to allow the proceeding to be dismissed. A.P. participated minimally, and did not complete anger management or parenting education services.

[5] On May 2, 2012 another proceeding was commenced after a number of referrals and interviews with the two of the children. This proceeding was

terminated on July 12, 2012 upon the parents executing a Memorandum of Understanding.

[6] In the Memorandum of Understanding the parents agreed to support and to allow needs assessments for the children, and to participate in family counselling. A.P. agreed to participate in anger management counselling. The parties also agreed to tutoring for the children, family support sessions for both parents, regular and consistent school attendance for the children. They consented to Agency visits, contact and access to information from service providers. The parents did not follow through on the Memorandum of Understanding. In particular, A.P. did not engage in family support work or anger management, and H.L. participated inconsistently with family support work. Agency workers were denied entry to the parents' home, A.P. was uncooperative with the Agency and H.L. failed to return Agency calls. The children's school attendance and performance was concerning.

[7] The Agency continued to receive concerning referrals regarding the parents treatment of the children.

[8] The current proceeding commenced on October 3, 2013. The Minister initially sought and received a supervision order with the children remaining in the care of the parents, residing at the home of the grandparents. On December 13,

2014, the parents consented to the protection finding on the basis of s.22(2)(g) of the *Children and Family Services Act* ("the *Act*"), i.e. substantial risk of emotional harm which the parent refuses to remedy or is unable to alleviate.

[9] The parents agreed to cooperate with the Agency, to allow the Agency to enter their home once a month, have the children see a doctor, cooperate with having the children participate in a "Needs/Psychoeducational Assessment", complete a parenting program through Kids Action Program, and ensure that three of the children attend the S.M.I.L.E program and that one child attend speech therapy. The parents and the children were to reside with the grandparents. This latter requirement was dropped in March 2014 when the parents obtained housing.

[10] The parents did not consent to the plan of care submitted by the Minister at the disposition stage on March 3, 2014. A partial hearing occurred on March 12, 2014 at which time counsel for the parents requested an adjournment, and the matter was adjourned to May 27, 2014. On June 10, 2014, Her Honour Judge Melvin stayed the proceeding to allow for mediation. The primary purpose of the mediation was to discuss the services and supports which the Agency wished to implement as part of an ongoing disposition order. A mediation date of October 16, 2014 was set. Unfortunately, on that date A.P.'s counsel was ill and the mediation was postponed indefinitely.

[11] In the meantime, the Agency had received needs assessments for the two youngest boys from psychologist, Susan Squires. Ms. Squires identified significant social, behavioural, cognitive and academic concerns for these two boys. The Agency had also received a letter from psychologist, Debbie Pick dated October 13, 2014, who was attempting to complete assessments on the two older boys. In her letter she noted the parents had refused to sign a release so that she could receive a previous psychoeducational assessment completed on one child, and information from […] School. In addition, she indicated that she had been unable to complete final interviews with the children due to A.P. and H.L.'s lack of cooperation. She also noted serious concerns as to the children's behavior and learning and concluded:

> "To summarize, these two boys have very high needs and require a great deal of support and intervention in the home, school and community. (The oldest child's) behavior is particularly dysfunctional and I am concerned that before long (if not already) he will be extremely difficult to help in any way."

[12] The parents had not followed through in taking a parenting program through Kids Action Program, and neither parent was consistently engaged with the Agency or the recommended supports and services. The Agency noted A.P.'s complete opposition to Agency involvement and the children's distrust of authority, including teachers.

[13] Therefore, on October 17, 2014, the children were taken into care. On October 24, 2014 an Order to Vary placed the children in the temporary care and custody of the Minister. Initially they were placed in foster homes and the AKOMA Centre.

[14] Following the failure of mediation, Her Honour Judge Melvin recused herself as she had observed A.P. with the children in the community. Agreement was reached by consent that Judge Melvin's comments on the record would be entered as part of the court record without the need for cross examination.

[15] The Minister's Plan of Care dated November 4, 2014 was filed seeking permanent care and custody of the children. On November 5, 2014 the Initial Disposition Order was made placing the children in the Temporary Care and Custody of the Minister. On December 23, 2014 the children were placed with the grandparents with a view to long term placement. In a telephone call between J.L. and an Agency worker on February 4, 2015, J.L. indicated he and his wife could not look after the boys long term, but he would keep them to the end of the school year. He expressed that he felt rushed to make decisions and needed to build onto his house to accommodate the boys.

[16] The children were removed from the maternal grandparents' home on February 9, 2015, and placed in their previous placements.

[17] Currently, the two younger children are in one foster home, the oldest is at AKOMA, and the other child is in another foster home. The children see their grandparents each weekend. This access has been supervised since May 2015 due to concerns about inappropriate comments to the children. The parents were attending access at the grandparents', but they have not attended access since it has been supervised. The parents and grandparents have regular telephone access with the children.

Law

[18] This application is made pursuant to the *Act*.

[19] 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, neighbour 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"

[20] 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.

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

[22] The timeline for disposition orders in this matter expires on November 5, 2015.

Issues

[23] The issues are as follows:

1. Does the failure of mediation amount to the Minister's failure to provide "less intrusive alternatives" pursuant to s. 42(2) of *Children and Family Services Act*?

2. If not, should any or all of the children be returned to the parents' care?

3. If not, should any or all of the children be placed with the maternal grandparents, with or without supervision?

4. Should any of all of the children be placed in the permanent care of the Minister at this time?

5. If any of all of the children are placed in the permanent care and custody of the Minister, should access be ordered for the parents, or maternal grandparents?

Issue 1- Mediation

[24] Counsel for the mother submits that mediation is a service pursuant to s. 13, which was agreed to by all parties, but was not tried, nor was it refused or attempted and failed, and also that it is impossible to know whether or not mediation would have been inadequate to protect the children. Therefore, he argues that pursuant to s. 42(2) of the *Act*, this court cannot make an order removing the children from the care of the parents. H.L.'s evidence is that the primary purpose of the planned mediation was to address the services in which the parents would participate.

[25] The Minister's response is that mediation is always voluntary and requires all parties to agree. The Minister's evidence is that after receiving Ms. Pick's letter and Ms. Squires' reports, and in light of the historical lack of engagement by the parents with respect to services, they determined that the risk to the children was too great to delay the process any further in the hopes of successful mediation.

[26] S.13 of the *Act* limits the Minister's obligation to provide services to "reasonable measures". It is not clear from the *Act* if s. 13(2)(i), "mediation of disputes", refers to disputes between parents, for example, or between parents and the Agency, as in this case.

[27] Mediation in this case was ordered pursuant to s.21 of the *Act*. This allows for a three month stay in proceedings. In this case, the stay extended for over four months. Therefore, by October 2014, the timeline for the initial disposition hearing to be completed had exceeded the statutory time limits by over 10 months.

[28] I find that the Agency acted reasonably with respect to mediation, and that failure to engage in mediation in the circumstances does not preclude this Court from removing the children from the care of their parents, should I consider this to be necessary and in the children's best interest.

Issue 2- Return to Parents

[29] The Minister's evidence provides a history of extensive Agency intervention with this family, resulting in the children being removed from their parents' care on three occasions.

[30] The evidence of the […] School principal and vice principal is very concerning. They both gave evidence as to the behavioural, developmental and emotional deficits displayed by the three older children. They described the children as being dirty and having "huge" learning gaps. As disturbing, is the parents' lack of engagement with the school and when engaging, their choice was

to engage in conflict and display disrespectful, antagonistic behaviours and responses. The vice principal described A.P. as "reactionary and aggressive".

[31] The evidence of the Behaviour Intervention Resource Teacher (BIRT) at […] School was even more telling. She testified that she had observed and interacted with the three older children, and had worked extensively with the oldest child. She described the children as having poor attendance, very poor hygiene, and poor self-care skills (e.g. eating). She described the oldest child as being non-compliant, impulsive and aggressive in the extreme. She also reported that he said things like, "I don't have to do this or listen to you because my dad says so." This speaks to his state of mind.

[32] The BIRT teacher also noted that the third oldest child who would have been in Grade Primary at the time, was "very, very non-compliant" and "incredibly rude" and that his speech was "almost unintelligible".

[33] She described the second oldest child as more compliant, but "vulnerable and fragile".

[34] She observed that A.P. had disrupted classes, would not listen to explanation and intimidated by yelling and swearing at staff. In March 2012 a *Protection of Property Act* notice was put in place prohibiting A.P. from attending at the school.

[35] The BIRT teacher noted that the parents had failed to attend a meeting in January 2012 regarding the oldest child's psychoeducational assessment and that H.L. had not attended a meeting regarding his Individual Planning Program for 2012-2013. A.P. had refused to allow the children to participate in the S.M.I.L.E program for children with sensory and behavioural issues.

[36] The BIRT teacher, principal and vice principal all noted that when the children lived with their grandparents, they were clean and the grandparents were appropriate and supportive of the children and the school.

[37] H.L. admits A.P. has problems with persons in authority and A.P. stated he is loud and opinionated. However the evidence reveals that his behaviour towards the school goes much further than this. He has obstructed school efforts to help his children, and the children have either been encouraged by him to not engage with services for their benefit, or they have mimicked his behaviours and attitudes.

[38] Needs Assessments were conducted on the four children by two psychologists, Deborah Pick and Susan Squires, who were both qualified to give expert opinion evidence in the area of child and adolescent psychological assessments. I accept the uncontroverted opinions and evidence of these experts. I

find that both Ms. Pick and Ms. Squires were impartial, contrary to the suggestion of H.L.'s counsel.

[39] The Needs Assessments identified an astonishing level of neglect of these boys' basic needs in the assessors' respective opinions, all of the children are performing well below a level commiserate with their cognitive abilities and their academic and social development has been negatively impacted by their severe behavioural issues. They are oppositional, defiant and non-compliant, and have attention issues.

[40] These issues have been identified at all stages of the boys' lives, but there has been very little follow through by the parents.

[41] H.L. filed an affidavit and was cross examined. J.L. filed a "will say" statement, gave *viva voce* evidence and was cross examined. Their respective attitudes continue to be that they are good parents and do not need help. They fail to recognize the significant damage they have done by not addressing their children's needs. They blame the school and the Agency for the boys' problems. The evidence is clear that they have obstructed most efforts to get them to change their parenting so as to meet their children's needs. They have set up their boys to

fail by instilling in them a mistrust of persons in authority and a noncompliant, almost anarchist approach to life.

[42] The evidence is clear that if these boys are returned to their parents care they will fall farther and farther behind socially, academically and emotionally. Their care has been entirely inadequate, and there is a substantial risk that the children will continue to suffer emotional harm in the care of their parents. I find that the parents have done virtually nothing to remedy or alleviate the significant risk that their parenting poses to their children's emotional well-being.

[43] The Needs Assessments recommend that the children's caregivers need to learn to effectively deal with the children's oppositional and defiant behaviour and that the children require consistent, structured, positive parenting in a safe and secure environment with care givers attuned to their development. Given the parents' respective current attitudes and their past parenting, I find that they are not able and will not be able, or willing to meet the needs of the children and provide adequate parenting within the statutory timelines. There are no reasonable services in which they could participate which could remedy these concerns within the timelines. Therefore the children will not be returned to the care of the parents.

Issue 3- Placement with the Grandparents

[44] The grandparents love their grandchildren and have been a significant support to them. The children are very close to the grandparents and have lived on and off with them throughout their lives.

[45] The witnesses from […] School report positive changes in the children when they have been in the care of the grandparents, and note that the grandparents have been cooperative and supportive.

[46] The three older children attended […] School when residing with the grandparents. Between October 2013 and June 2014, the children first lived at the grandparent's home, and then were driven to school for several months from their parent's home in […] to […] by J.L.. The principal of […] noted that the three older children required Individual Planning Programs. She described the children's attendance and hygiene as good. The oldest boy was involved in some aggressive incidents, but generally she felt the boys had a good year. She did not encounter any issues with the parents or the grandparents during this time.

[47] The Minister was prepared to consider long term placement of all four children with the grandparents until February 2015. The Minister's current position is that they are willing to place the oldest child in the care of the grandparents, but

they are concerned that placing the other three boys with them will overwhelm the grandparents and lead to the failure of the placement.

[48] The grandparents have shown a remarkable commitment to these children. They are honest, capable people. I am impressed that even the parents and in particular, A.P., have great respect for the grandparents. The grandparents have cooperated with the Agency and have consistently placed the children's needs above their own.

[49] J.L. explained in his evidence that he does not have an extensive vocabulary, and he did not explain his position properly in February 2015. He was overwhelmed and felt rushed by the kinship assessment. This had raised concerns about the size of the grandparent's home and the fact that one of their adult children still resided there. He felt rushed to make decisions (e.g. adding on to his house) and unsupported by the Agency.

[50] The grandparents received no supports or services while the children were in their care between December 2014 - February 2015. I do not blame the Agency, and I note that there was little time to put services in place. For example, the youngest child was not yet in school or daycare and this was a stress.

[51] J.L. testified that he now has the financial support of his son to add on to his home so as to provide bedrooms for all the boys. He believes this will take a few weeks. The youngest child starts school in September and will not be home during the day. They now have a van to accommodate all the children. They have arranged to meet with Ms. Pick and Ms. Squires to review the children's Needs Assessments. They have a good rapport with […] School. They have been working with the children academically and realize that these children are far behind where they should be. The children have been exposed to the grandparent's religion, and the second oldest child in particular, identifies with that religion. They are willing to dedicate themselves to the care of the children and do what is necessary to meet their needs. They admit that they will need transitional assistance from the Agency which can be provide until November 2015.

[52] I was confused by the evidence of the grandparents that they had no concerns about the children being returned to the parents' care. This is contrary to statements they have made to the Agency in the past and their complete endorsement of the Needs Assessment. However, I am confident that they will follow the direction of the Court and have the ability to gain necessary insight into the needs of the children.

[53] I therefore find that on the balance of probabilities, that J.L. and H.L. (Sr.) can meet the needs of the children and provide consistent, structured, positive parenting in a safe and secure environment. I find that their plan is a reasonable plan and is well conceived. It is in the children's best interests that they will be placed with the grandparents.

Conclusion

[54] The children will be placed in the care of their grandparents, J.L. and H. L. (Sr.), under the supervision of the Agency until the end of the statutory timeline, i.e. November 5, 2015, at which time they shall have sole custody the children pursuant to a *Maintenance and Custody Act* order.

[55] The children's return to the grandparents' home will be as follows: the oldest child shall return full time by July 10, 2015. The other three boys will continue to spend weekend time at the grandparents' home as they had done prior to the Agency's requirement for supervision. They will transition to full time residency with the grandparents no later than August 24, 2015. This will allow J.L. to build onto his home, and will also provide some time for the children to settle in prior to school.

[56] The Minister will continue to provide therapy for the boys. They will be transitioned to local private therapists by September 1, 2015. The grandparents will put the children's names on the waiting list for local public mental health to allow for therapy after the Minister's involvement ends in November 2015.

[57] The Minister will ensure that the grandparents immediately have access to the children's therapists, to help them learn to deal with the children's oppositional and defiant behaviour. Debbie Reimer or Boyd & Pick are to be engaged by the Agency to provide defiant parenting education to the Ls to be completed within the next 6 weeks. The Ls are to be provided with child care if requested to allow them to attend all necessary appointments.

[58] The Agency shall continue to follow the recommendations in the Needs Assessments and those of the children's respective therapists with respect to the children, e.g. psychiatric consultations, pediatric consultation for the oldest, play therapy for the youngest and private speech therapy for the two youngest, occupation therapy assessment for oldest and a tutor for the second youngest.

[59] The grandparents shall not permit the parents to interfere with any of the children's ongoing treatment or programming by criticizing or even inquiring of the children. The parents may visit the children at the discretion of the

grandparents, but no more than 2 daytime visits per week. They shall not be left in charge of the children and shall not be permitted to attend at the grandparent's home unless J.L. is present.

[60] The Agency workers shall meet with the grandparents to discuss and prepare a written list of expectations and boundaries for the parents, which shall be provided to the parents.

[61] The court will review the services provided to the grandparents and the children and will assess the need for additional supports and services in September 2015.

Jean Dewolfe/JFC