

**IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA  
[Cite as: Family and Children's Services of Hants County v. C.B., 2007 NSFC 20]**

**BETWEEN:**

**FAMILY AND CHILDREN'S SERVICES OF HANTS COUNTY  
-APPLICANT**

**AND**

**C. B. AND R. B.  
-RESPONDENTS**

**BEFORE THE HONOURABLE JUDGE BOB LEVY**

**HEARD AT: KENTVILLE**

**DATE HEARD: MARCH 26, 2007**

**DECISION DATE: APRIL 11, 2007**

**APPEARANCES: DONALD MACMILLAN FOR THE APPLICANT  
CHRYSTAL MACAULEY FOR THE RESPONDENT C.B.  
THE RESPONDENT R. B. FOR HIMSELF**

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**DECISION**

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**Issue:** Children and Family Services Act, troubled adolescent, interim care and custody, agency having little success finding a suitable or stable placement, child's behaviour deteriorating.

**Result:** Interim care and custody in favour of child's father although that placement not without problems and risks. In order for a child to be ordered into, or to remain in, interim care the agency has to show, (a) it has a solid plan, (b) it is able to effect that plan, and (c) that the plan is demonstrably superior to the child being in parental care.

By the Court:

1. M, the 14 year old son of the Respondents, was taken into care by the Applicant agency in late February of this year as he was out of control and neither parent was prepared to have him in her or his care. At the March 5, “five day”, hearing the Respondent mother C.B. was not present but her counsel, Ms. MacAulay, appeared on her behalf and consented both to a finding that there were reasonable and probable grounds to believe that M was in need of protective services and an order that he remain in the temporary care and custody of the agency. The Respondent father R. B., being aware of his right to counsel but electing to represent himself, also agreed.
2. It seemed to be common ground among the parties that the matter should proceed quickly through all its stages up to and including a final disposition of permanent care and custody in favour of the agency. As Ms. B. was not present, (pleading, through her lawyer, a medical appointment), and to give everyone time to think this through one more time, the matter was adjourned to March 26. Then, if everyone remained of the same mind and the court was satisfied that the prerequisites of section 41 (4) of the Children and Family Services Act were met, it was contemplated that the remaining steps of the process could be ‘telescoped’ and the court could move to a final disposition of permanent care to the agency.
3. On March 26 Ms. B. did not appear again and her counsel was left without explanation for her absence. The agency sought, if not permanent care, then interim care and custody, pending any further adjournment. Mr. B., still representing

himself, although appreciative of agency involvement, was no longer agreeable to his son remaining in the temporary care of the agency and he sought an order that his son be in his care and custody on an interim basis.

4. I granted Mr. B.'s request, subject to the supervision of the agency, and although I gave reasons from the bench I reserved the option to file a written decision on the issue of the child's interim care. This is that decision.

## **BACKGROUND**

5. The circumstances leading up to this application are set forth in the exhibit to the originating affidavit of the Applicant. The child was in the legal sole custody of his mother. She reported that because of his aggression, she and her 15 year old daughter were seldom home and had to sleep elsewhere. She further reported that she would drop by every few days to check on him, and see if there was food in the house. After another reported assault on his sister in May of 2006, his mother no longer wanted him at home, the child's father would not agree to take him and so the agency placed him at the Reigh Allen Center in the H.R.M.. Ms. B. maintained contact with him for a time but soon became "more sporadic" in her contact with him.

6. After an incident at the Center when M was charged with assault and threats he was discharged from there and went to live with his father. Things did not go well there either: he refused to attend school, he would not participate in family activities, there was aggression towards his step siblings and there was conflict

between M and his father's partner. A decision was made to seek another placement for M. Ms. B.'s conduct continues to make it clear that she wants little to do with him. Mr. B. was urged to seek legal custody but until now he has declined.

7. M was once again taken into care and was referred to the Janus program in, I believe, New Glasgow. The Janus officials expressed frustration that Mr. B. was difficult to engage in their outreach program. M continued to spend weekends with his father but his father reported that he was through trying to engage the child in family activities any more. He is reported to have made it clear that it was the responsibility of the agency and of the Janus program to "fix" M. Workers were concerned that the boy was getting the message from both parents that they did not want him. It is reported that Mr. B. did not perceive this as a problem. He further declined to attend a meeting with the Applicant agency to discuss plans for the child saying that the boy does not want to live with him, that in any event it was the boy's mother who had legal custody, that there was therefore nothing to discuss and that he could not afford to take time off work.

8. At a 'risk conference' on February 22 the Applicant made the decision to formally take M into the care and custody of the agency and to commence court proceedings "so that (M) could be afforded a stable placement". As indicated, at the "five day" stage this course of action was agreed to by all parties.

9. On March 26 counsel for the Applicant conceded that his client has "struggled" to find a placement for M that was either appropriate or timely. As the

agency was making no headway on this, as I understand it, M ended up again at the Reigh Allen Center. Agency counsel conceded that this, "...was not the best spot for him but it was the only option at the time...". He said that the agency did not have access to the type of facility that would or could be able to ensure that M wouldn't be out all hours getting into trouble. Counsel continued, "...(s)o we are looking at a possible placement in Hebron which would be a long term placement in a group home setting where he could get some counselling assistance and obviously educational assistance." No mention was made of the recommendation from Janus that a foster home or 'small options' home be considered and one can only assume that no such placement is available.

10. (I should say that I have some familiarity, entirely second hand, from dealing with adolescents who have been at Hebron over the years. As caring and as committed as staff is there, I am not aware of any reason to believe that M would be more likely to pursue his education or to get into less trouble there than any place else.) Agency counsel sounded no more optimistic on that point than I am.

11. Counsel was well aware of Mr. B.'s frustration with the inappropriateness and ineffectuality of the agency's placements to date, and accepted the legitimacy of the father's concerns that M was, "...running the roads at night...".

12. Mr. B. reported that M would not attend school while in the Janus program. He also reported that when M was placed again at the Reigh Allen Center he was advised the first night that he called there that one evening M had been drunk and the next night he had broken into a church. He said he'd prefer it if M came home

with him as he was, "...getting in too much trouble down there and they cannot guarantee me that he is not going to get into this trouble...". He said, "...I don't want a phone call saying that it could have been the same situation as my son in a stolen car and driving all over everywhere and running over someone. Right? At least home...we are kind of isolated there but he hasn't run." He was respectful in his remarks, grateful for the efforts of the agency, and welcoming of further assistance. His concern was not with the agency but with the lack of an available placement and program that would provide his son the structure and resources he needs to address and hopefully to turn around his behaviour.

13. A placement of M with his father is not without its potential problems, all of which the father acknowledges. Firstly, there is the fact that he had been reluctant all along, or initially at least, to put forward a plan for the child to be with him, and, when he was placed there, there were serious problems leading to him eventually being placed elsewhere by the agency with the father's consent. There is some uncertainty about the willingness of Mr. B.'s partner to have M around given their conflict and M's assaults on her children. The boy tells his father he would like to live with him but he tells the agency that he doesn't want to live at his father's. The family home is very rural and isolated and both Mr. B. and his partner are away at work all day which would be leaving M with no supervision except as may be provided by some relatives who live nearby. He felt that although the monitoring might not be all it could be at times that at least it would be better than M being where he couldn't monitor him at all.

## **ANALYSIS**

14. The agency had no choice but to intervene when it did. The boy was out of control and neither parent was able or willing to provide him a home or a plan. Both parents agree, and I have so determined, that there are reasonable and probable grounds to believe that M is in need of protective services, (section 22 (2) (k), at least until we see if the tenuous placement with his father will survive).

15. Now, if only those services existed, or, if they exist, they could be accessed!

16. Regrettably, the Applicant, because of the paucity of resources for troubled youth in our province, is not able, at this point, to meet the needs of this child any better than is his father. In fact the good news, if there is any, is that the father, unable to bear the lurchings and fumbblings that have passed for a plan of care to date, and the inexorable descent of his son's life into unmitigated chaos, has been moved to rescue his son from the state and provide a place for him, problems or no.

17. In fairness, neither this agency or the province advertize themselves as being workers of miracles. There is a limit to what any intervention, particularly one for a child of his age whose problems seem so serious and pervasive, can do. It is not exclusively a question of resources and resolve; there are limits to the programs that can be imposed upon an unwilling subject. Neither is it even remotely fair to those who toil away in the various programs that do exist to cast aspersions on their efforts or to minimize the successes they do have, some times against great odds. Lastly, it needs to be said, with respect to Mr. B., that until March 26, that he has hardly been a model of consistency and commitment with respect to his son, and his consigning of his son to the state for a 'cure' was not only a faith

misplaced, it was an obligation shrugged.

18. That said, the recent Nunn inquiry into the A.B. [*editor's note - name redacted for privacy reasons*] case leaves no doubt that the province's historical response to troubled adolescents has been considerably less than adequate. In fact, in an eery evocation of that tragedy Mr. B. laid bare his fears that so out of control had his son become in state care that he will one day get a call about his son, "...in a stolen car and driving all over everywhere and running over someone."

19. What is an agent of a child welfare agency to do? I am aware from being on the bench these many years that it is not unknown for an agency not to even offer to step in for an older difficult child even though that child is obviously in need of protective services because it knows that there are no adequate programs or placements available to meet that child's needs. I know too that when a child like M does come into the care of the agency that some agent is condemned to 'working the phones', often for days on end, trying, begging for a placement, any placement whether it is appropriate or not, and doing so in competition with agents of other agencies similarly desperate. I know too, again from years on the Family and Youth Court benches, that a placement and a solution are by no means synonymous, that all too often the child simply winds up "running the roads" in a new territory, with new "friends" and new dangers. To risk an overstatement to make the point: It seems that the child welfare system is reduced at times to biding its time until the child becomes the problem of the criminal justice system. Too many children oblige. That the criminal justice system is no less challenged to effect a remedy is another matter altogether.

20. This is not a happy decision and I am not happy writing it. Protective services are needed, have been invoked, but the cupboard is bare. Add M's name to the list. So home he goes to his father's and we'll all hold our breaths. Before a child is ordered into or to remain in care it is incumbent on the state or its agent to (a) show that it has a plan, (b) that it is able to effect that plan, and, (c) that the plan is demonstrably superior to the child remaining with his or her parents, relative or within his or her community. Shuffling a child around between placements the sole virtue of which is that they are available does not meet that test.

21. Society cannot respond with half measures to the challenges presented by our troubled youth and expect that such an abdication comes at no cost. That aphorism seems to have been lost for years on our policy makers. One can only hope that the response to the Nunn inquiry will signal a change.

## **DECISION**

22. Keeping M in interim care will serve neither the interests of the state or the child. Maybe his father, aware now that the state wields no magic wand, will accept that there is no alternative but for him to do his very best, and however painfully, to grind out some positive relationship with his son, to get him some help, and maybe to set him on a new path. Maybe a solution, not now apparent, will surface. Either way, the agency can keep an eye on things, continue on the alert for a suitable and stable placement if necessary, offer advice and facilitate access to local services.

23. The matter stands adjourned for a pre-protective services conference at a date and time to be set.

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Bob Levy, J.F.C.