IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA

Cite as: Nova Scotia (Community Services) v. C.T.,
2006 NSFC 3

DOCKET: FDCFSA-037765
REGISTRY: Digby

BETWEEN:

Minister of Community Services

-APPLICANT

AND

C. T. & F. Y

-RESPONDENTS

DECISION

JUDGE: The Honourable Judge Bob Levy

HEARD AT: Annapolis Royal

DATE HEARD: January 26 - 27, 2006

DATE LAST SUBMISSION RECEIVED: March 10, 2006

DECISION DATE: March 13, 2006

APPEARANCES: W. Bruce Gillis, Q.C. for the Applicant
Randolph Gass for the Respondent C.T.
The Respondent F.Y. took no part in these proceedings

Editorial Notice

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

Restriction on Publication: Section 94 (1) Children and Family Services Act:

> "94 (1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in or the this Act, or a parent or guardian, a foster parent or a relative of the child."

By the Court:

1. This decision concerns the disposition of protection proceedings brought by the Applicant agency with respect to the child D.J.J.T., (D.), born March *, 2005. The father of the child, although served, has taken no part in these proceedings. The child's mother, C.T., has contested the proceedings at all stages, without counsel at the protective services hearing stage, and with counsel for the disposition hearing which occurred on January 26 and 27. (Ms. T.'s difficulties, not entirely of her own making, in arranging for counsel put us considerably behind time.) Written submissions from counsel have now been received.

2. The evidence in support of the Applicant's request for permanent care and custody of the child is overwhelming. Ms. T.'s parenting ability has been previously assessed and found wanting in a 1998 decision of Chief Judge Comeau. There is some, but ultimately and regrettably insufficient, evidence of change or prospect of change.

THE FACTS

3. The Respondent is thirty-two years of age. D. is her eighth child. Six of her children have been placed in the permanent care and custody of the Applicant by Chief Judge Comeau and the seventh is in the care and custody of his father. To read her affidavit, (Ex. 4), is to be struck by the litany of hardship and abuse that she reports from a very early age to the present. Perhaps as the professionals say she overstates her victimization and minimizes her own responsibility, but it

probably gives, I believe, a fairly good view of her life to date. It is an enormously sad read.

4. In the course of the various proceedings, including this one, Ms. T. has been seen and assessed by a small army of professionals. Francine McIntyre, psychologist, whose 1994 report is not before the court, is quoted by several subsequent professionals, particularly for her conclusion that Ms. T.'s functions at the 'borderline intellectual capacity' level, but that her auditory skills and presentation are so good that people could mistakenly believe that she understands when in fact she is only repeating what she has heard.

5. Michael Donaldson, who to my knowledge has done an extensive number of assessments regarding parenting in southwestern Nova Scotia before Chief Judge Comeau, prepared a report in March of 1998, for the court in a previous proceeding, (Ex. 1, tab 4). It is a damning assessment of Ms. T.'s parenting and of its impact on her then four children. He concluded that her parenting was "woefully inadequate", he described the home that she provided for her children as an "environment of despair", and said that if left to her own resources her children would "be exposed to severe levels of risk of physical abuse and neglect."

6. Dr. L. G. Cottrell, psychiatrist, in a report dated June 17, 1998 before Chief Judge Comeau, (Ex. 1, tab 2), diagnosed her with a "probable Borderline Personality Disorder", which features "impulsivity" and "unstable" ("predictably unpredictable") behaviour. He said that this condition means that the "capacity for consistent reliable conduct is often limited" even with help, and that even with

psychiatric treatment he didn't expect she would be able to take over the care of a large family, and that while she "appeared to be coping" at that point with the care of the youngest child, it was "with a lot of help".

7. There is a November 6, 2003 report from psychiatrist Dr. Brian Garvey at tab 7 of Exhibit 1. He also testified. In his report he said that "if (he) had to choose any one formal label" it would be "Antisocial Personality Disorder." He identified her as having "the bland indifference to her children's suffering and hunger, the desire for immediate gratification, the poor judgement, lack of respect for social norms, etc." representative of the Disorder. He said she is "simply a highly irresponsible mother with minimal nurturing instincts and apparently, little understanding of children's needs and/or no ability to fulfill them." He testified that she is "a cold, cold person" and that this was "incompatible with her being a caring mother." He remarked on the "extraordinary degree to which she rejects responsibility and blames others." He said his diagnosis is "the only diagnosis in psychiatry, which is totally incompatible with being a good mother". He said she is "not a competent or even reasonable mother, and by definition, a personality disorder is pervasive and inflexible and not likely to change."

8. An undated report from psychiatrist Dr. Rodri Evans, probably from April, 2004, is also discouraging. He reported that her "presentation is of general inadequacy" related to her "intense neediness and her willingness to subjugate her own healthy needs as well as those of her children, to relationships with men." He continued that this, "...together with her limited intellectual ability, her tendency towards impulsivity and her poor management of her emotions in general has made

her a poor parent and an extremely difficult client for child welfare agents." He described her dependent nature as "most impressive". He said his diagnosis "does not inevitably preclude her parenting effectively" but that she was "vulnerable" in some circumstances to putting her children at risk. He said that she "may show some signs of improved functioning over time." He did not accept Dr. Cottrell's diagnosis, but rather diagnosed her with a "Personality Disorder, Not Other (sic) (Otherwise) Specified with Dependent and Antisocial Traits."

9. Dr. David Mulhall, psychiatrist, in a report dated April 28, 2005, agreed with Dr. Evans' diagnosis. He saw the dependent traits in "the succession of abusive and exploitative relationships with males", and the antisocial aspects in her "impulsivity and failure to plan ahead, lack of remorse as indicated by being indifferent to or rationalizing having mistreated or hurt others". He felt her personality traits can be understood as being "consequent to her upbringing and early abusive relationships." He noted the earlier assessment of her intellectual functioning. He commented that she "dismisses" the opinions of all of those who do not see her as a capable and caring parent and observed that this fact and her past history "raises ongoing concerns." He also did not see a role for medication or "counselling/therapy". He believed that it would only be after a lengthy period of extremely intense supervised parenting that one would be able to get a sense of whether she has improved to the point of possibly being able to parent.

10. Dr. Mulhall, in the June 21 hearing remarked on her lack of comprehension as to why the agency was concerned. He reiterated that it would take a "extremely comprehensive", "long term", "real life observation" in a "live-in" situation to

assess her parenting abilities. On January 26 he agreed with Dr. Garvey's bleak assessment of her parenting abilities. He found it telling that she had expressed "surprise" that D. was apprehended. He said that she lacks "introspection" and that she doesn't understand the "complexities of long term relationships with children." He said that her "lack of acceptance" of any responsibility is the biggest source of concern. He did say however under cross-examination that some of the factors identified by Ms. T's counsel were "encouraging factors" but continued that "improved behaviour under supervision doesn't have much predictive value", that it is behaviour over time and whether improvements can "survive" that are most important. He said that even after long term and intensive supervision of perhaps six months or so that there would still be a need for a "period of involvement over a number of years." He did concede that he was "not sure" that psychiatric information can "usefully predict" her parenting abilities in the future.

11. Stephen Theriault, psychologist, prepared a report as well, dated June 20, 2005, (Ex. 1, tab 11). He also testified in June and again in January. He observed that whatever the specific diagnoses of the various professionals, they all "cluster together" in the DSM 1V categorization of personality disorder, that there is "considerable overlap" within the category. He noted the previous findings as to her intellectual functioning. He reported on the results of various testing measures he employed. He commented on several occasions about her "defensiveness", her "suspiciousness that readily grades into outright paranoid delusions under stress". He noted, pages 6-7 of his report, her complaints about everyone in 'the system', that everyone was against her, including almost all of the professionals, her lawyer and the Family Court. This mindset was responsible for her "ongoing obstructive

behaviour". He summarized that there is "good evidence" of one or more personality disorders and that the three most detrimental aspects of her situation are: her borderline intellectual capacity, her "marked and inflexible defensiveness" and her "paranoid view of others" which together created "an effective barrier against all efforts to improve her functioning." He said there is "no evidence" of "change or of a capacity to change" and concluded saying that she doesn't have "the intellectual capacity, the emotional resilience or stress tolerance to provide even basic care for a child outside infancy", although he did observe that her intellectual capacity in and of itself is not at the "exclusionary level" for parenting.

12. Throughout this entire proceeding Mr. Gass, counsel for Ms. T., left no stone unturned. Doctors Garvey and Mulhall and Mr. Theriault were cross-examined meticulously by him. He was at pains to point out to each of the professionals (and to the court) the positive steps, or putative positive steps, that she had taken in recent times: e.g. her having moved from a very unsatisfactory apartment, her ending her relationship with the father of D., her home having been tidy and clean, her cooperation with the agency and the predominantly the positive reports of the access supervisor, Melanie Morrison. (Indeed it is conceded that this time around, as opposed to previous times, Ms. T. was very cooperative with the agency). Each of the professionals, allowed that, yes, these were "positives" and a "good sign" but stressed that only if and when, over a long period of time, including times when she may be under stress and not closely supervised, she consistently shows good judgement and capable parenting, could one begin to conclude that perhaps the potential danger to any child in her care has lessened. None of the professionals can be said to have been optimistic about her ever overcoming her problems and

being able to parent safely and well. While conceding that perhaps theoretically with abundant services and intensive monitoring some degree of change was conceivable, their evidence gave no basis for a belief that sufficient change could occur within the time frames of the legislation.

13. As indicated, in 1998 Chief Judge Comeau wrote a decision placing four of her children in permanent care and placing a fifth, born in the course of the proceeding, in the temporary care and custody of the agency. In that decision, (Ex. 1, tab 3) His Honour repeated facts that led to the "protection" finding, noting, "the referrals from the children's teachers at school, the R.C.M.P., ambulance workers, home care workers, public health workers, physicians and neighbours". He continued, "All the evidence makes reference to family violence, failure to provide proper food and clothing for the children, access to dangerous medical supplies, language development problems of the children, lack of concern over potential for the sexual abuse of the children, mistreatment of the children (inappropriate discipline measures) and general neglect from lack of parenting skills." He went on to enumerate other findings of a similar nature. He noted that during an access visit she had bitten her youngest child "hard enough to leave a mark" and that she had been charged with and pleaded guilty to a charge of assault for doing so. (She now denies the biting and blames her lawyer for the guilty plea.) He cited Dr. Cottrell's report, (the only psychiatric report then available) and said, "It is clear from this report, supported by other evidence, that she is not competent to take over care for a large family." He had said, in his 'protection' finding with respect to the youngest child, "Given the past history of the Respondent-mother's parenting, her present trend towards being uncooperative and the diagnosis of borderline

Personality Disorder the Court finds, on the balance of probabilities, the child...(is in need of protective services)."

14. The court also heard evidence from agency social worker Lynn Sullivan and from the director of the agency, Sean Marshall. They set forth the circumstances that led to their view that, apart from her being more cooperative this time around than they had anticipated, essentially "nothing had changed", that she had "no supports", that there was no hope to be had from medications or therapy and that they had no more services to offer her. They perceived that any improvement that might possibly come would take a long time, require services that were either unavailable or which Ms. T. had no real interest in pursuing, and be too unlikely or transitory to be justified in the interests of the child.

15. Lastly the court heard from Ms. T.. I listened attentively for any signs that the experts had gotten it all wrong, for any indication that she really did have an insight into her situation and her needs, that she was no longer blaming everyone else, and that she was truly willing to accept assistance. Alas, I did not get that assurance. She still believes that everyone is out to get her and although she says she would accept help, it didn't sound that she really meant it or believed that she had anything to learn. Her living situation, though changed, is still precarious, best described as hand to mouth. She had, as of the hearing date, no accommodations of her own. She is immensely vulnerable in these circumstances to once again falling prey to an abusive and exploitative relationship. Admittedly, she has not had the opportunity to be a parent and to be observed for a number of years, but her presentation on the stand, regrettably, did not persuade me that the conclusions and

pessimism of the professionals was misplaced.

16. I appreciate that Dr. Mulhall raised the possibility of Ms. T. and her child residing for perhaps six months with and being intensely supervised and observed by, in effect, a foster parent for the both of them. This, he felt would give the best view of her potential. The Applicant says that it has no such service available. That is a pity. One might hope that the Ministry can explore the feasibility of putting more effort into seeking out such homes in the future. While it is a logical idea that seems to have a lot to recommend it, I still cannot see, in this instance, that even if it were available the lengthy investment in time for what by all accounts is the slimmest of hopes is justified for the sake of the child, given his age and "sense of time".

17. The Respondent is the living embodiment of why there are child protection laws. Her experiences in childhood and to date have scarred her terribly. Her personality disorder, her present chronic unsettled circumstances, the hurt she has caused her children and her inability to protect them or to comprehend, empathize with or meet their needs, her inability to trust others and to accept their assistance are all the inevitable consequences of that trauma. There is no reason to believe that she can change within the foreseeable future. It is profoundly sad. This mother is the little girl of years ago whom society could not protect. However, to return this child to her care would be to merely afflict another generation with the legacy of abuse and neglect.

18. D. is in the same foster home as one of his sisters who, I believe, has now

been adopted. This is seen as a potential adoption home for D.. There is no family or community placement, there are no services that have any hope of improving things and, even if there were, there is no reason to believe that the necessary results could be achieved in time. D. is young. Time is of the essence.

19. I order that D. be placed in the permanent care and custody of the Applicant. In the circumstances there will be no order for access although I appreciate that there has been an amendment in the legislation to provide that an access order does not operate necessarily to bar an adoption.

_____

Bob Levy, J.F.C.