

IN THE FAMILY COURT OF NOVA SCOTIA  
**Citation:** Nova Scotia (Community Services) v. C.H.M.,  
2010 NSFC 16

**Date:** 20100707

**Docket:** F. Y. 09Y065002

**Registry:** Yarmouth

**Between:**

Minister of Community Services

Applicant

v.

C.H.M.

D.S.

C.G.

Respondents

**Editorial Notice**

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

**Publication restriction:** **Publishers of this case please take note** that **Section 94(1)** of the **Children and Family Services Act** applies and may require editing of this judgment or its heading before publication. **Section 94** provides:

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

**Judge:** The Honourable Judge John D. Comeau, Chief Judge of the Family Court of Nova Scotia

**Heard:** April 7, 2010, in Yarmouth, Nova Scotia  
May 25, 2010, in Digby, Nova Scotia

**Counsel:** Martin J. Pink, Q.C, for the Applicant  
Dell C. Wickens, Q.C., for the Respondent C.H.M.  
Colin J. Fraser, for the child N.

**The Application:**

Protection Evidence

- [1] This is a Disposition Hearing which follows a Protection Order made the 14<sup>th</sup> day of October, 2009. The time limit for this hearing has been extended in the best interests of the children.
- [2] Following the Protection Hearing the Court made a specific order with respect to the following children:

M. born October \*, 2001

M. born October \*, 2001

B. born September \*, 1998

N. born November \* , 1996

- [3] The terms of the Order placed the children in the care of the Minister with access arranged and approved by the Minister of Community Services, Yarmouth District Office.
- [4] Further terms included and were directed to the mother C.H.M.

- that C.H.M. shall participate in a psychological assessment as arranged by the Department of Community Services through David Cox or some other psychologist as arranged by the Minister's agents .

- that the child N. shall participate in counselling as arranged by the Minister's agents.

- that C.H.M. will participate in counselling through Barry Wiser.

- that C.H.M. will participate in the In-Home Family Support Program as arranged by the Minister's agents.

- that C.H.M. is to obtain and maintain suitable housing sufficient for her children's needs.

**ISSUES:**

[5] Disposition, long-term care of the children.

**THE FACTS:**

- [6] The children's fathers, named as Respondents after having been given notice, have not participated in this proceeding.
- [7] There has been an open file with the Minister's agents since 2000. The major concerns were lack of supervision of the children by the mother, the conditions of the home with respect to cleanliness; an inadequate environment for raising children and, in particular, the failure to provide for their basic needs.
- [8] Other concerns involved dental neglect although the service was free. As a result the children have had to attend a dentist's office in Halifax for major dental work.
- [9] This family's file was opened and closed on a number of occasions because the Respondent-mother responded minimally eliminating the Agency's involvement.
- [10] In June 2009, a referral was received by the agent from the mother's landlord complaining that rent was not paid and the accommodations were a mess. There was also concern expressed that there was a lack of supervision of the children by the mother. A number of neighbours complained about this.

- [11] An examination of school attendance indicates records for all four children were bad. In fact records indicated that one of the girls had missed 23 days since April 1, 2009. (Affidavit of agent dated June 23, 2009) and that the other girls had missed 12 days.
- [12] There is an indication that the Respondent-mother moved four times in one year with the children resulting in three separate schools.
- [13] The Minister's agent visited the Respondent-mother's house on June 17, 2009, and all four children were home from school. The home was a complete mess and smelled of urine. The children slept on mattresses on the floor. N. slept on the couch. The bedrooms had no furniture. The excuse for not sending the children to school is that she did not have any lunches for them. Her mother was going to help her out in that area.
- [14] As a result of these observations the Respondent-mother was told she could not stay there. The three girls went to the maternal grandmother's and N. went with a neighbour. Five days later the maternal grandmother dropped the girls off at the Minister agent's office because she could no longer care for them and there was no other option (Respondent-mother's home still a mess) but to take the girls and N. into care.

- [15] Evidence is that N. has serious allergies and asthma due to mould and dampness at the Respondent-mother's residence. It was observed his puffer medication was empty, although this was free.
- [16] Contributing to this problem and the mess in the home was the number of pets (dog and several cats) there . The Minister's agent paid to have the cats removed fearing they were a risk to the children's health.

### **Professional Report:**

#### Disposition Evidence

- [17] David Fox, MSW, Msc, Psychologist, prepared a Psychological Report on the Respondent-mother dated December 4, 2009. He also testified at this hearing. He reports:

Much of the information summarized in this section was prepared in advance of the assessment contact and is based on sources including collateral contacts and file material supported by the Agency.

Case Recording Reports (case notes) from November 2000 to August 2009 were reviewed in preparation of this assessment.

[18] The assessor describes the history of involvement by the Minister's agents since November 2000. Concerns were expressed over her allowing an association with a known pedophile. Neglect and physical punishment were also investigated.

[19] There were continuing concerns about the home:

Another referral was received in September 2002 about the condition of the home. The floors were filthy, and there was clothing, bedding and cat food throughout the apartment. The Agency Worker advised C.M. that an improvement was expected over the next few days, and that the Family Support Worker would not be returning until the situation improved. Although C.M. expressed the belief that the situation had improved by October, it was observed that the condition of the apartment remained very upset, with clothing strewn about, and cat food and feces on the floor. Her children, including her year-old twins, were all over the yard. She nevertheless expressed the belief that things were going better with the children. She claimed that she knew what needed to be done, but did not appear committed to setting limits with the children, or making appropriate parental decisions on their behalf. For example, a preschool program has been considered for B., who had just turned four, but C.M. expressed the belief that B. did not want to attend and said she was not prepared to force her.

Although C.M. again expressed the belief that everything was going well in late October 2002, the apartment was in such a state that it became necessary to hire two individuals for two days to return it to a reasonable starting point. It was later determined that the two days were insufficient and three days were needed. For the next six months, there were occasional improvements in the state of the home but these proved to be temporary. There was an especially serious deterioration in the state of the home when C.M. was working briefly in 2003.

In August 2003, C. M. moved to a new apartment and was warned by the Agency not to allow her home to deteriorate like her previous several residences. However, the apartment was almost immediately described as disgusting and unclean with limited food. Although the home was in acceptable condition two

weeks later, it was the Worker's impression that unless C.M. was under constant pressure from the Agency, the situation would deteriorate to where it had been previously ...

In July 2004, the children were found to be very dirty, and there were concerns about missed dental appointments. In late July 2004, C.M. reported increasing problems with the children's behaviour, including seven year old N. ordering her around. N. and B. would not come home for meals until they were ready. C.M. had not taken the children to a family gathering because N. did not want to go.

About a year later, in June 2005, there were again concerns about the conditions of the apartment, dampness, and a musty smell which would aggravate C.M.'s and N.'s Asthma. M., age three, was described as not listening to her mother and domineering with her twin sister. C.M. attempted to put M. in time-out, but it was observed that this experience appeared to be quite unfamiliar to her. C.M. described ineffectual behavioural management strategies such as rewarding children at the end of the week if they refrained from swearing every day.

It was observed in July 2005 that the children were extremely dirty. On one occasion, both twins were found naked and dirty. It was observed that C.M.'s ability to keep the home clean was extremely fragile. That is, she could manage to do so with a great deal of support and prodding but the situation deteriorated if there were any additional health problems or other stressors. Similarly, there was another deterioration in the home in December 2005 when C.M. was briefly employed. There was increasing concerns about C.M.'s and N.'s Asthma, and both were hospitalized during the Christmas holidays.

In February 2006, the Family Support Worker observed that C.M. seemed to be cleaning all the time but accomplishing nothing, even though the children were gone during the day.

In May 2006, C.M. was admitted to the hospital due to the mould in her apartment and was in ICU for several days. Although she was encouraged to contact Housing, it was observed that she seemed content to leave this up to the Social Worker at the hospital.



In June 2006, the condition of the home appeared to have improved. It was noted that the case had been open for five years, and the Agency had provided all the services it could. The case was closed with C.M.'s agreement.

The Agency received a number of referrals with respect to the family in September 2006. Hearing and Speech advised that M. and M. were being removed from the caseload as a result of repeated missed appointments. In October 2007, C.M.'s mother reported that the house was again extremely filthy, with a large number of cats and feces throughout the home. C.M.'s mother had bought her a washer, but she had left it behind on one of her moves. Although C.M. indicated that she did not want the Agency re-involved in her life, she made frequent calls for assistance with transportation and other practical matters.

In November 2007, it was reported that N. (age 11) had attended only nine days of school. C.M. gave various excuses including illness and failing to get the children up. It appeared that if N. did not want to attend school, he did not do so.

In December 2007, C.M.'s previous landlord advised that she had been evicted for non-payment of rent. Other problems had included repeated failure to clean up the home, running out of oil and no beds for the children. Although C.M. had reported that she was receiving a student loan and maintenance from the children's fathers, her rent was still not paid.

In January 2008, a neighbour reported that N. and another one of the children were in front of the house throwing rocks at cars at about 10:00pm. It was also reported that N. had been sent to McDonald's by cab at 11:00 pm. C.M. confirmed that N. had refused to eat throughout the day, and decided late at night that he was going to McDonald's. It seems that she was powerless to stop him and said she got a taxi because she did not want him to walk.

In March 2008, C.M. and N. began counselling with Rod Moores at the Agency. N. also began contact with a Youth Worker resulting in some behavioural improvement. The Worker again described the apartment as extremely messy with food remnants on the floor. C.M. was again evicted in the summer of 2008. She expressed the intention to move in with her mother.

In November 2008, it was again reported that N. was missing a great deal of school, and C.M. appeared unable to enforce his attendance. Dr. Chandler, the Psychiatrist who had been seeing N., suggested that there might be a time when N. would require placement. C.M. attempted to apply for public housing but still owed rent from a previous housing unit.

- [20] Reference to this history is made because it is Agency involvement upon which the assessor has partially formed an opinion. The assessor made the following observation upon his first meeting with the Respondent-mother.

In conversation at the beginning and the end of the assessment, C.M. showed a striking tendency to attribute virtually all aspects of current and past problems to external circumstances beyond her control or to the actions or unfairness of others. Her perceptions and interpretations of events and situations were often very different from what had been documented in the file, sometimes to the point of appearing skewed and distorted.

Agency Plan (dated January 22, 2010)

- [21] The Minister is asking that the children be placed in permanent care.

Services that have been provided over the years include:

- Family support services
  
- Housekeepers/educators to assist in cleaning and how to maintain the home
  
- Counselling - family therapist

- Counselling - mental health
  
- Counselling - psychiatrist
  
- Youth Worker for N.
  
- Hearing and speech professionals for the girls
  
- Respite services
  
- Employment, income assistance and public housing

[22] The concerns are expressed as follows:

Where the Agency proposes to remove the child from the care of a parent or guardian:

- (a) Explanation of why the child cannot be adequately protected while in the care of the parent or guardian. (Refer to the condition or situation on the basis of which the child was found to be in protective services)

This Agency and a neighbouring Agency (Digby District Office) have had ongoing involvement since November 2000 with respect to C.M. and the care of her children. Reasons for this involvement have been due to concerns regarding lack of supervision, the condition of the home with respect to cleanliness, in particular the provision of basic needs as well as her limited recognition of parent-child issues including lack of insight, poor judgement and lack of control over the children. Concerns also include the children's lack of attendance in school. In addition, there were ongoing issues of dental neglect resulting in the children requiring major dental work in Halifax and contributing to speech

impediments with respect to M. and M.. Numerous services were put in place to assist in alleviating the above concerns over the years.

The Agency received increasing amounts of referrals in June 2009 concerning the condition of C.M.'s home as well as the children's significant lack of attendance from school between April to June 2009. Upon further investigation it was found that one of the girls had missed 23 days of school since April 1<sup>st</sup> and the other two children had missed approximately 12 days during this time.

Since March 2008, C.M. has moved approximately four times due to financial mismanagement and the condition of the home resulting in multiple evictions. Upon attendance to C.M.'s home to discuss these concerns, it was noted that the children were not in school and C.M. reported not sending them due to not having lunches to provide. It was also noted that the home was extremely unsanitary smelling strongly of animal urine and in one bedroom there was one mattress for all three girls. When the blanket was pulled back it was noted that the mattress was uncovered and found to be dirty and mouldy. It was also noted that there was no furniture in the girls' room or N.'s room, and he had only a mattress with one blanket. The remainder of the home, including the entryway, had piles of garbage, bagged clothes and animal feces. C.M. was advised to clean her home and bring it up to an acceptable standard. The following day insignificant changes were made and she was advised that the children could not remain in the home and as a result alternate arrangements were made by C.M. as per Agency direction.

Following the weekend it was noted that the condition of the home had still not improved and C.M. was unable to continue to make alternate arrangements. A risk conference meeting was held discussing the chronicity and worsening nature of these issues, in combination with her lack of insight and her inability to make lasting change. In the best interest of the children, it was decided that the children were in need of protective services and taken into the Agency's care.

[23] The present situation is such that the Respondent is unable to establish a suitable residence to accommodate her children. A family placement

(maternal grandmother) was explored but she is unable to take care of the children.

[24] The plan refers to the conclusions of the psychologist, Dave Cox, to support their proposal for permanent care:

Where the Agency proposes that the child be placed in the permanent care and custody of the Agency:

- (a) Why the circumstances justifying the proposal are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits? (Specify the barriers to change, Agency efforts to remedy or alleviate those barriers and why those efforts would be unsuccessful within the maximum time limits provided in the Act):

As per the Psychological Report by David Cox which has taken into consideration the Agency's involvement and services provided to C.M. over the years, the following conclusion has been made:

At the time of this assessment, C. demonstrated limited recognition of parent-child issues including the almost complete absence of behavioural limits and a problematically weak or reversed distinction between adults and children.

C. does not have a history of sustained and productive involvement with clinical and other services. Her relationship with the Agency has been largely dependent in nature and has not been used as a means to establish independent problem solving and parenting skills. It was not clear at the time of this assessment whether she would establish a working relationship with Mental Health Services. Furthermore, the manner in which C. perceives and defines problem situations leaves little common ground for

working cooperatively with the Agency and other professionals to resolve these concerns.

The Respondent's Plan of Care

[25] A Plan of Care in the form of a letter from the Respondent's counsel dated March 24, 2010, has been filed with the court. She is asking that the children be returned to her care under the supervision of the Minister for as long as the Act allows . This return would not take place until the children finished their current school year. Her residence will be in K. (now has a specific address). She receives social assistance.

[26] Specific aspects concerning the apartment:

- rent goes directly to the landlord

- there is a \$200.00 Social Assistance bed allowance and with this the Salvation Army would help her in obtaining new beds.

- There is a washer and dryer on the premises and a laundromat just down the street.
  
- Her mother will be helping with other furnishings (dressers, pot and pans)
  
- The apartment is a two bedroom but the landlord would allow her to use the living room as a bedroom and the dining room as a living room.
  
- A three bedroom apartment was becoming available in May.
  
- She is looking to a specific needs school in W.
  
- She is willing to taking parenting courses and cooperate with the Minister's agents.
  
- She says she has learned from the children being taken away.

**THE LAW:**

[27] Section 42(1): Disposition Order

42(1) At the conclusion of the Disposition Hearing, the Court shall make one of the following orders in the child's best interests:

- (a) dismiss the matter;
- (b) the child shall remain in or be returned to the care and custody of a parent or guardian subject to the supervision of the Agency for a specified period, in accordance with Section 43;
- ©) the child shall remain in or be returned to the care and custody of a person other than a parent or guardian with the consent of that other person subject to the supervision of the agency for a specified period, in accordance with Section 43;
- (d) the child shall be placed in the temporary care and custody of the Agency for a specified period, in accordance with Sections 44 and 45;
- (e) the child shall be placed in the temporary care and custody of the Agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or ©) for a specified period, in accordance with Section 43 to 45:
- (f) the child shall be placed in the permanent care and custody of the Agency, in accordance with Section 47.



[28] Section 42(2): Restriction on Removal of Child

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
- ©) would be inadequate to protect the child.

[29] Section 41(5): Duty of Court Upon Making Order

41(5) Where the Court makes a Disposition Order, the Court shall give

- (a) a statement of the plan for the child's care that the Court is applying in its decision; and
- (b) the reasons for its decision, including;
  - (I) a statement of the evidence on which the Court basis it's decision, and
  - (ii) where the Disposition Order has the effect of removing or keeping the child from the care or

custody of the parent or guardian, a statement of the reasons why the child cannot be adequately protected while in the care or custody of the parent or guardian.

[30] In the case before the Court past services have been tried and failed. The issue is protection of the children; services cannot be provided indefinitely and the issue is the best interest of the children and their timely needs. [See D.M.F. v. Nova Scotia (Minister of Community Services) (2005) NSJ No. 1 (C.A.)]

**CONCLUSIONS/DECISION:**

[31] The Respondent is the mother of four children who have been referred to earlier. She has no physical or emotional support from either of the children's fathers.

[32] There has been involvement of the Minister's agents since 2000. Concerns were over lack of supervision of the children, the condition of the home with respect to cleanliness and environment. There were problems with the children's dental care to the extent that Minister's Agents had to take them to Halifax for major dental work.

- [33] The issue is one of chronic neglect and lack of supervision. Services that were provided included counselling and in-home support programs. In the end, at apprehension, there were accommodation problems, lack of supervision and failure to attend school for no reason.
- [34] Almost ten years of steady or intermittent involvement by the Minister's Agents failed to enlighten the Respondent on what she had to do to protect her children and provide for their basic needs. She ascribes her past and present problems to "external circumstances beyond her control or to the actions or unfairness of others." For example, the reason for not sending the children to school was because she did not have lunches to send with them or they had head lice or did not want to go.
- [35] She says the apprehension after ten years of child protection involvement was "the biggest wake-up call in my life. Definitely learned a lesson. I now have a schedule for cleaning."
- [36] At the present time the Respondent lives in K. in a two bedroom apartment. She has dressers, a couch, but no beds and is living on social assistance who would provide her with funds to provide beds from the Salvation Army. She would not have pets which was a cause of concern for allergies of the children.

[37] There have been a number of concerns over the years and the Minister's agents have been involved off and on for a period of ten years. During that time there were occasions when the Respondent would improve to the extent that agent's involvement would be terminated. Chronic neglect occurs over a period of time and each time involvement by the state was terminated they have had to go back in again.

[38] The Psychological Report indicates that the Respondent has a high IQ so why does she continue in a lifestyle that neglects the basic needs of the children? She has, and had, financial assistance from the state. She has the intellectual capacity to learn and exercise proper parenting but has not done so. There is no evidence that her parenting would improve. Very little has changed since the children were apprehended except that she has moved again. Continuously moving from one place to another in different school districts was one of the issues supporting the Minister's contention that there was and would continue to be chronic neglect.

[39] Although the report of Dr. Cox used Agency notes as a briefing, he conducted a number of tests that were helpful. The accuracy of some have been questioned but overall they are helpful. It is clear, as Dr. Cox says,

Results from standardized measures of cognitive and learning-related abilities clearly establish that identified child protection concerns are not the result of cognitive limitations or deficiencies in acquired skills.

Results from clinical and personality measures are relevant to the concerns which have been identified. There are strong indications of personality dysfunction or disorder and evidence of histrionic personality traits. Consistent with the Respondent's presentation, this finding indicates a tendency to be dramatic, easily excited and prone to emotional outbursts. There is often a tendency to be self-centered which could be rectified in the Respondent's perception of events and issues and her tendency to attribute problems to the actions or unfairness of others. There can also be a tendency to avoid reflecting on and integrating unpleasant thoughts, emotions and situations. This characteristic could contribute to the Respondent's repeated failure to appreciate or address serious problems with respect to the condition of her home.

[40] These character traits will not change by indicating to the Court after all this time that she has seen the error of her ways or can correct them. Over a decade the Minister has worked with and tried to help the Respondent care for her children. At this late stage the Court sees no least intrusive solution that would be in the best interests of the children.

[41] It is ordered that the children be placed in the permanent care of the Minister with no access. As the parent of the children the Minister has the discretion to allow access.

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John D. Comeau  
Chief Judge of the Family Court  
of Nova Scotia