

IN THE FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v. F.W., 2010 NSFC 32

Date: (20101213)
Docket: F.SB. 057662
Registry: Yarmouth

Between:

Department of Community Services
Shelburne District Office
(on behalf of the Minister of Community Services)

Applicant

v.

F.W. and J.W.

Respondent

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.

Editorial Notice

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

Judge: The Honourable Judge John D. Comeau, Judge of the Family Court for the Province of Nova Scotia

Heard: November 2, 2010, and November 8, 2010,
in Shelburne, Nova Scotia

Counsel: Donald G. Harding, Q.C., for the Minister
Dell C. Wickens, Q.C., for the Respondent, F.W.
Wayne S. Rideout, Esq., watching brief for the Respondent, J.W.

The Application:

- [1] This is a review of a disposition (Temporary Care and Custody Order) pursuant to Section 46 of the **Children and Family Services Act**.
- [2] The Disposition Order was made by consent dealing with three children; D., J. and D.. F.W. is the mother of the children and J.W. is the father of J. and D.. He took no part in the proceeding except to have counsel attend on a watching brief. D.'s father is J.B. who has not participated and fails to qualify under the definition of parent in Section 3(r) of the **Act**. He originally appeared at the five day hearing (March 17, 2008).
- [3] The specifics of the Disposition Order dated October 5, 2009, are as follows:
1. That the children D. (D.O.B. 2002 *), J. (D.O.B. 2005 * and D. (D.O.B. 2007 *) are in need of protection under Section 22(2)(b), (d) and (g) of the **Children and Family Services Act**.
 2. That the child remain in the temporary care and custody of the Applicant (Minister of Community Services).
 3. That the matter be reviewed on December 7, 2009.

[4] On December 7, 2009, with all parties and counsel present, the matter was adjourned to January 11, 2010. At the review date the parties agreed to another adjournment of the review to April 19, 2010. Further, on that date, it was adjourned to June 14, 2010, by consent. Pre-trial was held on May 17, 2010. It appears the June date was changed to June 28, 2010.

[5] The Disposition Order (Temporary Care and Custody Order) was reviewed on June 28, 2010, as follows:

1. That the children D. (D.O.B. 2002 *), J. (D.O.B. 2005 * and D. (D.O.B. 2007 *) are in need of protection under Section 22(2)(b), (d) and (g) of the **Children and Family Services Act**.
2. That the children shall remain in the temporary care and custody of the Applicant (Minister of Community Services).
3. That a Parental Capacity Assessment shall be conducted of the Respondent, F.W.
4. That the matter shall be reviewed at Shelburne on August 16, 2010.

[6] The August 16, 2010 date resulted in another adjournment by consent to September 27, 2010.

[7] This new date involved an update concerning the Parental Capacity Assessment previously ordered but not ready. It confirmed the Minister's new plan for permanent care and custody dated July 10, 2009, which was in the file. Counsel for the Respondent, F.W., was to file her plan of care in the form of a letter and the matter was adjourned to October 4, 2010, for review. On that date the evidence on review was started and the Respondent, F.W.'s, plan of care was tendered and the hearing was adjourned to October 25, 2010, following a pre-trial for the next court date. Trial dates were set on October 25, 2010, for November 1 and November 8, 2010.

[8] The result of all these adjournments is that the Court's only options are dismissal or permanent care and custody. The original disposition was made on October 5, 2009. All the children were under six years of age at the time of the commencement of proceedings (March 13, 2008). Total period of duration of disposition orders is twelve months. This disposition review was commenced on October 4, 2010, one day prior to the expiry of the time limit set out in Section 45(1)(a) of the **Children and Family Services Act**.

Issue:

[9] Disposition Review. Which plan of care is in the children's best interests?

The Facts:

[10] The original finding of the children in need of protection was based on neglect and domestic violence which involved alcohol and drug use. There was evidence that the Respondents were both smoking crack cocaine in the presence of the children. During a visit to the home, the Minister's agent observed a convicted child abuser there with the children home. When confronted about this person, the Respondent, F.W., advised he did not live there and she believed he had done nothing wrong and she had never left her children alone with him.

[11] When confronted about drug use, the Respondent, F.W., admitted to using "weed" once but never in the presence of the children.

[12] There were allegations of lack of food in the home and school lunch money was not provided to D.. Through this child, there was evidence that the

Respondents “heated white stuff in a spoon with a lighter and smoked it in a pipe”. He also advised of fights between the parents and there was alcohol/drinking in the house in front of the children.

[13] Evidence was on many occasions there was no food in the house and the power had been turned off.

[14] In the Agent’s affidavit supporting the apprehension, she refers to J., who was being cared for by M.A. while the Respondent was in the hospital.

J. ... comes to their home complaining of a sore belly because she is hungry. She often gets our a grocery bag and fills it with items to take home for herself, her sister D. and her brother D..

Evidence on Review:

[15] The Minister's agent referred to the Respondents/parents' drug abuse and the concern about safety and supervision of the children. Concern was expressed about D.'s ongoing sexualized behaviour posing a threat to his sisters. As a result, following the apprehension, he was placed with the paternal grandparents while his sisters reside in the foster home of M.A. and D.A.

[16] There is concern over the Respondent, F.W.'s, plan to be the sole caregiver of the children (all three, she wants). The lack of secure housing in what could be an isolated area and the lack of a license gives the Minister's agent cause for concern. Financial concerns form a major part of the problem on the return of the children to F.W. She needs social assistance to survive but cannot apply for it until she has the children.

[17] During the course of the past year D. has been seeing a psychologist. This should be continued but the agent does not have faith in the Respondent,

F.W., continuing it. The children were behind in their immunizations and the Minister had to correct this problem.

[18] The Respondent, F.W., has a relationship with a person who has not agreed to meet or cooperate in any way with the Minister's agents. There is some evidence of suspicious bruises seen on the Respondent, F.W., when she has come for access visits. Her mother refers to an incident of domestic violence between F.W. and her boyfriend. In fact, F.W.'s brother called the R.C.M.P. because of a dispute between the two and her mother says "I may have told someone about a knife and him (the boyfriend) throwing an aerosol can at her."

[19] The Minister's agent questions whether the Respondent, F.W., has made a significant lifestyle change. She has been very slow obtaining addiction counselling and reports only came in, in 2010. It is a team decision to request permanent care and custody. There have been seven case plans prepared for the file.

- [20] On cross-examination the Minister's agent admitted there has never been a case plan involving the Respondent, F.W.'s, current boyfriend. Evidence is he was not prepared to cooperate.
- [21] There has been consistent access visits by the Respondent, F.W., but the girls are seen separately from D.. This was requested by F.W. because of D.'s actions interfering with quality time with the girls.
- [22] The access facilitator has filed a report which forms part of the evidence on review and describes a day with all three children present for a swim at the lake. D. was splashing J. who was getting upset and was getting farther out in the lake. It was felt F.W. was not able to take charge of the situation to get the child out of the lake and one of the workers had to do it.
- [23] There is evidence that the children are physically aggressive during access visits. There have also been two occasions (April 2010 and September 2010) during visits with the children that F.W. smelled of alcohol. Although there have been no reports from the community, the Minister's agents are still concerned about the use or potential use of alcohol and drugs by F.W.

[24] Although not specified in the original disposition of October 5, 2009, the plan of care that was used in relation to the order required the Respondent F.W. to complete a number of things; fourteen, in fact. These ranged from mental health counselling to parental skills training. Most were completed at a late date and that is why this review's remedies are limited by Section 45 of the Act. There are still concerns that she cannot put into practice what she has learned and she has not involved her present boyfriend in planning for the long term care of the children.

[25] The Minister's plan involves the present foster parents adopting the girls and the paternal grandparents (where he now lives) adopting D.. Both their families are open to access following adoption.

[26] The case worker's job is to develop a plan for the basic needs of children when they come into care. She understood the three children in the present proceeding were at risk of emotional and physical harm. There was concern about D.'s sexualization (seeing pornography his father was watching). His excessive masturbation was discussed by this witness as well as the foster

mother. The latter having had to get him medical attention for injuries from doing this. It was felt he was a risk to his sisters having attempted to touch one sexually. He has problems including ADD and is aggressive in school. Therapy for D. has been set up and ongoing. This is something that the Respondent F.W. has never inquired about nor has she asked about the schooling of the children.

[27] Medication has been prescribed for D. and he is now doing better and the improvement has been since he has been brought into care.

[28] The intent of the Minister in co-ordinating an in care case plan is to get the children back with the parents. The next logical step would have been for access supervision at the parent's home, then overnight but the Respondent, F.W. never asked.

[29] From 2007 to the current time the family support worker was involved with the Respondent, F.W. She covered all aspects of parenting from discipline (time out) to finances. The Respondent, F.W., has been very cooperative but

does not apply what she has learned. Her parenting skills, she believes, are lacking.

- [30] Evidence has been presented in the form of an R.C.M.P. report that the Respondent, F.W., while drinking at her home, in the presence of the children, got in a fist fight with another woman.

Professional Report:

- [31] The report of Toni Campagnoni has been placed in evidence by consent. She also testified as a registered psychologist. In her report she describes the reason for services:

The reason for the therapy referral from the Department of Community Services was to assist D. in dealing with his rage. He has a history of aggressive and sexualized behaviour. This psychologist became involved in providing therapy services in December 2009, but also previously completed a psycho-educational assessment as requested by the Agency. The paternal grandparents also requested assistance in dealing with his difficult behaviour.

- [32] A therapy report was dated April 16, 2010 for the Minister and contains the assessment of Toni Campagnoni, psychologist. She refers to D.'s exposure

to horror movies and pornography when residing with his mother (F.W.) and her partner. The result of this is described by the assessor.

Exposure to Violence and Sexual Content

D. has reported having lots of access to horror movies and pornography when residing with his mother and her partner. There were no restrictions on the level of video games played so D. would play restricted games which were bought by his mother and partner. D. stated that he would stay awake at night and watch movies in his room. As a result of his exposure to violent movies, D. has had increased anxiety and symptoms of Post Traumatic Stress Disorder. He will have episodes where he will stare off and become panicked or aggressive.

He will report seeing the faces of scary people from the movies and scenes of mutilation (Saw, Scream, The House, Texas Chainsaw Massacre). In therapy, an effort has been made to help D. to understand that movies are not real and the frightening events are not real. D. has been educated that these are actors who are acting. He feels less anxiety as a result if he is in a store and sees a DVD box with such an image, however, he still calls out at night when he has these "visions."

In terms of sexual exposure, D. has informed his Grandparents that he saw people having sex in his home when he resided with his mother and her partner. He told this psychologist that he watched "porn" and people having "s-e-x". On April 1st, D. spoke with this psychologist about some of the sexual content he was exposed to through media/movies at his mother's home. D. offered to draw a picture, and drew two simple figure, and when asked what was happening in the picture he stated that "the man was putting his d-i-c-k in the woman's

p-u-s-e." There has been limited opportunity to discuss the sexual content.

[33] A psycho-educational assessment prepared by Ms. Campagnoni with respect to D. refers to the relevant goals that are ongoing.

“...D. has the cognitive ability to be successful, but his progress may be impeded and for behavioural issues caused by lack of adequate care. There are a number of markers which place him in a high-risk category for future anti-social behaviour. He needs consistency and stability in his life in order to address the risk factors.”

The Ministers Plan on Review:

Disposition Order sought:

The Applicant is seeking an Order pursuant to **Section 42(1)(f)** of the **Children and Family Services Act** that the children D., born DOB; J., born DOB, and D., born DOB, be place in the permanent care and custody of the Applicant, the Minister of Community Services.

The Respondent (F.W.) Plan of Care:

Ms. F.W. is requesting that the three children be returned to her care and that she be given care and custody of the children. The children are D., born *, 2002 (8 years old); and D., born *, 2007 (3 years old). [A typing error appears to have failed to name the child, J., born *2005.]

She would reside with the children in a two bedroom mobile home on * near * County, Nova Scotia. She hopes to rent the mobile home from M.P. beginning November 1, 2010. The two girls would share a bedroom, D. would have his own bedroom and Ms. F.W. would sleep on the couch in the living room. There would be just Ms. F.W. and the children living in the home. Ms. F.W. would be a “stay at home” mom for the children - she would not be working outside the home.

Right now Ms. F.W. is living with R.O. and she will continue to live at his residence until she gets a place of her own for herself and the children. She has no independent source of income right now. She will be applying for Social Assistance/Family Benefits and she would be eligible for the Child Tax Benefit and similar benefits if the children are returned to her care.

Ms. F.W. would keep the children involved with the programs, activities and counselling sessions that they are presently taking part in, including day care for D.. She would ensure that all medical appointments and all other professional appointments for herself and the children are kept, and that prescribed medications are given as required.

Ms. F.W. would continue her counselling sessions with Deborah May of the Alternatives Program. F.W. has completed a parenting course at Parent’s Place Family Resource Center in Yarmouth. She has been seeing Deborah May (instead of Joyce Morouny) for counselling on a regular basis and she will continue to do so. She was involved with Addictions Services in Yarmouth from August 2009 to April 2010, and a biopsychosocial assessment was completed.

As far as the use of drugs and alcohol is concerned, it was Ms. F.W's use of non-prescribed drugs that was one of the main factors contributing to her being unable to provide proper care for the children prior to May, 2009. She has not used non-prescribed drugs since the children were taken in care in May 2009.

It was not misuse of alcohol by Ms. F.W. that caused her to be unable to provide proper care for the children before May, 2009. Since May, 2009 she has consumed alcohol on a few occasions.

It appears to be the case that the reason the author of the Parental Capacity Assessment, Susan Hastey, recommended that the children not be returned to Ms. F.W's care was that Ms. F.W's partner of over a year (Mr. R.O.) would not participate in the Assessment. As of November 1, Ms. F.W. will not be residing with Mr. R.O.

Ms. F.W. has had regular visits and contact with the children since they were taken into care in May, 2009.

[34] There is reference to a parental capacity assessment above. Such a document has not been put in evidence or filed with the Court.

[35] The Minister's Plan of Care refers to an IWK assessment:

IWK Child Protection Assessment

D. was physically assessed by the IWK Child Protection Team in relation to his disclosures of Third Party Sexual Abuse and sexualized behaviour. A written report was received by the Agency with no physical findings of Sexual Abuse or Sexually Transmitted Infections but the IWK acknowledged age-inappropriate sexual behaviour. (June 2008)

The Law:

[36] This is a review of a temporary care and custody order and section 46 of the **Children and Family Services Act** is applicable.

Review of order

- 46 (1) A party may at any time apply for review of a supervision order or an order for temporary care and custody, but in any event the agency shall apply to the court for review prior to the expiry of the order or where the child is taken into care while under a supervision order.
- (2) Where all parties consent, the supervision by an agency of a child under a supervision order or the care and custody of a child under an order for temporary care and custody may be transferred to another agency, with the other agency's consent, and, where all

parties, including the other agency, do not so consent, the court may, upon application, order the transfer to an agency's supervision or care and custody to another agency, in the child's best interests.

- (3) Where an application is made pursuant to this Section, the child shall, prior to the hearing, remain in the care and custody of the person or agency having care and custody of the child, unless the court is satisfied, upon application, that the child's best interests require a change in the child's care and custody.
- (4) Before making an order pursuant to subsection (5), the court shall consider;
 - (a) whether the circumstances have changed since the previous disposition order was made;
 - (b) whether the plan for the child's care that the court applied in its decision is being carried out;
 - (c) what is the least intrusive alternative that is in the child's best interest; and
 - (d) whether the requirements of subsection (6) have been met.
- (5) On the hearing of an application for review, the court may, in the child's best interests,
 - (a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order;

- (b) order that the disposition order terminate on a specified further date; or
 - (c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 43 for supervision orders and in Section 45 for orders for temporary care and custody.
- (6) Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[37] Sections 42(2), 42(3) and 46(4) - What is the least intrusive alternative that is in the child's best interest? - like all others, must be interpreted and applied in the context of the **Act** as a whole and in light of the paramount purpose, the best interests of the child. (See Family and Children's Services of Kings County v. B.D., [1999] N.S.J. No. 220 (C.A.) paragraph 19

Conclusions/Decision:

[38] Prior to making an order on review, the court is required to consider whether “the circumstances have changed” since the previous disposition order was made. These changes may involve the parties or the children. Since the disposition order was made, the parties are no longer a couple and the Respondent, F.W., has a new partner in her life. She is prepared to vacate her co-habitation with this person so that she can have her children returned to her.

[39] The Respondent, F.W., has completed a number of programs required by the disposition order (itemized in the Plan of Care). There has been no report of her using drugs but there is evidence of a smell of alcohol on her breath at an access visit. She has attended addiction services for counselling and treatment. Her file was closed as of April 2010 with the counsellor advising F.W. “feels as if she does not have a problem with drugs or alcohol.”

[40] Her participation at Parent’s Place was described by the worker as positive.

F.W. attended parenting classes here at Parent's Place. We covered the following topics: Developmental Domains and Stages, What is Discipline? Positive Child Guidance, Engaging in Play Safety in the Home. F.W. participated in conversations during the classes and was very open in discussions.

[41] F.W. attended Alternatives in Western Region on December 14, 2009 with eleven subsequent sessions (presently scheduled for November 30, 2010).

The counsellor/community worker described her participation this way.

F.W. began attending Alternatives December 14, 2009 and has participated in 11 subsequent conversations. Her next appointment is scheduled for November 30, 2010.

I found that F.W. engaged in the counseling process and she spoke of a longing for a non-violent, drug free and healthy lifestyle for herself and her children. In addition, F.W. has also spoken of her commitment to her children and a preference for respectful relationships with those in her life. Within our conversations F.W. has outlined the ways in which previous behaviours have led her away from these commitments and preferences and her desire to ensure that these circumstances do not reoccur.

F.W. remains committed to doing what is necessary to regain custody of her children, although she is somewhat weary by the emotional trauma of being without her children. F.W. continues to engage in ways that stand for a non-violent, drug free and healthy lifestyle for herself and her children. In addition, F.W. feels that she is better able to assess a safe and healthy relationship that would support herself and her children.

- [42] She was required to keep stable housing for a period of three months which appears she has done with a partner. There are no sexual offenders nearby. The Minister's Agents have never assessed her present home because the children were never there and her partner will not cooperate with them. In anticipation of the children being returned to her, she has leased a mobile home which is in an isolated place according to the evidence. This lease was to take effect on November 1, 2010. A down payment of \$350.00 was to be paid but as of the date of the last court hearing, it has not been tendered.
- [43] The Respondent, F.W., says that the mobile home she has leased is fifteen minutes from * and ten minutes from *. This would require a change in schools.
- [44] She is in the situation that she cannot undertake this rental until she can get social assistance and she cannot get that until the children are returned to her. The sleeping accommodations in the trailer would include her sleeping on a couch, the girls having a room and D. having his own room. At the present time, it does not appear the trailer is furnished to meet her and the children's needs but she can do that in a day.

- [45] The Disposition Order required the Respondent, F.W., to participate in services offered by the Family Support Worker. This she did but, the Minister's evidence is that they do not believe those skills were actually picked up and applied by F.W.
- [46] The Respondent, F.W.'s drug use was out of control and she says she has not used any since May 15, 2005, maybe a little alcohol and "weed" has been used.
- [47] She started using drugs when she was a teenager and was shooting Dilauded for six months, introduced to her by the Respondent, J.W. she also used cocaine for a brief period of time. She knew she had a problem that is why she went for help. Although D. has drug knowledge, she does not know where he got it from.
- [48] The Respondent, F.W., views her present common law partner as family, although he has not formally met her children. She will leave him so she can get her children back. He has not agreed to cooperate with the Minister in

this venture but even if she gets the children back, she will maintain a relationship with him. She says “he probably would stay in her house with her and the children eventually.”

[49] There is evidence through F.W. that she had a disagreement with her common law partner and she left but there was no violence. This is partially refuted by her mother who says she may have told someone about a dispute between the two and the use of a knife with him throwing an aerosol can at her. This was, in fact, confirmed by a witness in more detail. The witness stated what the previous witness told her (F.W.’s mother) that the police were called to the couple’s residence where F.W. was kicked out by her common law partner. She told her he was beating F.W. with a phone cord and he made her hold a knife so it would be self-defence. F.W. had bruises on her leg from the cord.

F.W. and the children’s needs:

[50] Reference has been made to a professional report concerning D.’s problems. F.W. has never called or consulted with the psychologist but she says she

plans to keep in the program. She does not know the name of D.'s teacher. Never called the school because she was not aware she could do it with the child in care. Her respite would come from her family but there has been no evidence of a more detailed plan. When asked what else D. required, she had no answer.

[51] Section 46(4)(c) requires the court to look at the least intrusive alternative in the children's best interests. The Respondent F.W. has completed a number of programs which were intended to assist her to have her children with her. The issue is whether she can put these directions into practice and does she have a day-to-day reasonable long term plan of care for the children.

[52] There is no evidence that she is presently using drugs but she does use alcohol occasionally. She has never asked for increased access or overnight visits or a placement with her. No inquiries have been made by her to the children's teachers or counsellors. The programs which she was to complete were delayed because of her unavailability (could not get off work) and this was also a reason why there was no increased access or placement.

[53] As to her present plan of care, arrangements were made for accommodations at the last minute (no down payment has been made and she does not have proper furnishings). Her landlord, the evidence discloses, is a known drug trafficker and the trailer is in an isolated place. She plans to introduce the children to her common law partner gradually. He has not been investigated nor does he wish to cooperate with the Minister. There is also evidence that he and F.W. have been in a domestic dispute described as violent.

[54] The Respondent F.W.'s plan of care is ill-conceived, not reasonable and too late. It is in the best interests that the children be placed in the permanent care and custody of the Minister with no access.

[55] It is understood the proposed adoptive parents are not opposed to access but that is a matter for that process.

[56] Order accordingly,

John D. Comeau
Judge of the Family Court
for the Province of Nova Scotia