

IN THE FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v. K.B. , 2011 NSFC 20

Date: 20110824

Docket: F. No. 073241

Registry: Yarmouth

Between:

Minister of Community Services

Applicant

v.

K.B. and J.B.

Defendant

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 a 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, J.F.C.

Heard: June 1, 2011 and July 13, 2011 at Yarmouth, Nova Scotia

Counsel: Martin Pink Q.C. for the Minister of Community Services
Dell C. Wickens, Q.C. for the Respondent, K.B.
Colin Fraser, Esq. For the Respondent, J.B.

DECISION

The Application:

[1] This is a disposition under section 41 of the **Children and Family Services Act**.

[2] Three children were apprehended on January 26, 2011. They are L., born June *, 2000, S., born January *, 2002 and A., born February *, 2004.

[3] The Minister alleged under section 22(2) paragraph (b) of the **Act that:**

“There is a substantial risk the child will suffer physical harm inflicted or caused as described in clause (a) which is as follows:

‘The child has suffered physical harm, inflicted by a parent or guardian of this child or caused by the failure of a parent or guardian to supervise and check the child adequately.’”

[4] There had been an initial protection application to the Court and the Court rendered a decision (interim order) on December 15, 2010. At that time the children were to remain in the custody of the mother, K.B., with friendly

supervision by the Minister's agents. The father was not to reside at their home but was to have supervised access. There was a subsequent apprehension as a result of a number of referrals to the Minister's agents following the interim order.

[5] On February 23, 2011 the Court found the children in need of protective services at the protection hearing. They remain in the care of the Minister of Community Services with access to the parents.

The Facts:

Evidence at the Protection Hearing

[6] This evidence included affidavits of the Minister's agents at the five day stage and an update prior to the protection hearing following apprehension of the children.

[7] The order at the five day stage provided that the children remain in the care and custody of the mother, K.B., with friendly supervision by the Minister's agents. The father, J.B., was to reside elsewhere and have supervised access.

[8] Concerns were the ability of the parents to supervise the children in light of their cognitive functioning. There were reported several incidents of domestic violence with the children present and that the father, J.B., was abusive towards the children. As a result of this behaviour, the mother had to stay at Juniper House (the women's shelter) for one night.

[9] The oldest child L. did not want to go to school and was left alone with his father, contrary to instructions by the agent to the mother.

[10] During the last week of November, 2010, there were reports the children were running around the neighbourhood saying they were hungry and asking for their mother. There was evidence that the mother sometimes leaves the oldest child in charge (10 years old at the time).

[11] Agents attending at the home observed what they classified as "disgusting" with a litter box full (4 cats and 4 dogs). The mother had no bedroom for herself and slept on the couch.

[12] On January 26, 2011 the children were apprehended following a risk assessment meeting. This followed a referral on December 20, 2010 that K.B. (The mother) had moved with the children from * to *. At the new residence, a neighbour reported the children were running outside and playing at midnight and 1:00 a.m. They were left unattended on one particular day until 11:00 p.m.

[13] The Minister's agents advised the mother that she was not to leave the children unsupervised and that the father was not to be present without their approval. At this time a Home Family Support Program was implemented for the mother.

[14] Following this, the mother advised agents she was having a difficult time controlling the children's behaviour by herself. The children were swearing at her and not following her instructions.

[15] A referral came in from the * that the mother was advising him she could no longer care for her children.

[16] The concerns over the children's care and protection are summarized in the Minister's Plan of Care dated the 18th day of April, 2011 (further details will be discussed later):

- “
- inadequate supervision

 - behavioural issues and parent's inability to manage these behaviours

 - unfit living conditions

 - risk of physical harm to the children due to the parents' tempers and neglect, untruthfulness by the mother, K.B. towards professionals or service providers that they have dealt with.

 - physical neglect (lack of food, poor physical care and hygiene)

 - medical neglect

 - domestic violence witnessed by the children

 - failure to follow through with services offered”

[17] There is a history of involvement with the mother, K.B., by the Agency (Minister). In 1998 she was married to K.H. and there is evidence of abuse towards her. With respect to the Respondents Agency (Minister) involvement dates back to 2004.

[18] The parents were involved with “child welfare” when they lived in *, in 2005-2006. Concerns were the children were not being fed and the house was not clean. This resulted in a supervision order until the file was closed.

Evidence at Disposition Hearing:

Parental Capacity Assessment:

[19] An assessment was prepared by Kevin Graham, Psychologist, Family Therapist and dated March 30, 2011. The report was commissioned by the Minister to prepare a Parenting Capacity Assessment with emphasis on cognitive capacity concerning the Respondent K.B. and J.B. This was done by reviewing the Agency file and five sessions with the parents. They were separated at the time (presently back together) and after some initial hesitation, the father J.B. agreed to participate. After the children were taken into care he observed one supervised visit with each of the parents and the children. He collected social history from each parent and

had them complete testing related to parenting issues, personality and cognitive capacities. Collaterals provided by the parties were spoken to.

“The purpose of the assessment is to attempt to determine the parenting strengths and liabilities of each party with a view in mind to either provide services that would utilize their strengths to improve on their weaknesses or to determine whether they are able to continue or in the parenting role.”

[20] There has been continuous residential instability for this family, * for three months and before that, * for six months. They then lived on * for four months, * for five months, * for three months and one place in * for two years. The present residence would be for approximately four months to the end of July.

[21] Financially the mother gets social assistance.

[22] Following testing, the assessor expressed the following concerns with respect to the mother K.B.

The Mother:

“Parenting Strengths and Concerns based on Testing Summary.

Strengths:

1. K.B. learns best through a visual or picture approach. She shared an image that she had remembered from her current parenting program, which had remained with her. She appears motivated to learn and can progress when she is receptive to outside assistance. Feedback would be an important element to insure that she is learning what is being presented.
2. Once she is engaged in a learning process she demonstrates persistence.

Concerns:

1. K.B. has a learning disability, which negatively impacts her ability to take in, process and utilize information presented in a verbal or written format. Her ability to comprehend material concerning parenting issues is limited by this disability and the information may be need to be repeated several times for her to get it.
2. She is therefore also limited in her capacity to reason things through especially when faced with a challenging or stressful issue related to parenting. She appears limited when it comes to thinking through the consequences of a course of action.
3. Her cognitive approach to problem solving would tend to be more concrete and inflexible making it difficult for her to see or utilize different approaches when faced with a parenting decision.
4. Planning is also a deficit area for her.
5. K.B. has quite a low level of insight into her own behavior and that of others. Her ability to understand or respond appropriately to the emotional and developmental needs of her children is limited.

6. Both establishing routines and enforcing limits are weak areas for her, leading to a limited range for child management skills.
7. She is quite vulnerable when stressed to delusional thinking and misinterpretation of the motives of others. In these moments, if a child is misbehaving she might tend to personalize the behavior as an action against her as opposed to something actually stressing the child.
8. There is sufficient indication in the testing to confirm that K.B suffers from depression, which results in bouts of low energy, morose feelings, and low level functioning, making the tasks of parenting more difficult. This may be why we witness her children unattended while she is on the couch watching television.
9. K.B. is highly impulsive and often acts without thinking through the consequences of her behavior.
10. K.B. also struggles socially and would have limited ability to join in and draw on others for support. She is quite needy and dependent in her spousal relationship rendering her vulnerable to being taken advantage of and resulting in passive aggressiveness on her part which fuels domestic violence within the home.”

The Father:

“Parenting Strengths and Concerns based on testing results.

Strengths:

1. J.B. was cooperative with the testing procedures. I sensed that he was able to trust me to some degree, which facilitated his participation. This is somewhat positive given his tendency to be more withdrawn and oppositional. I believe that he has a genuine interest in his family and would like to have things go better.

Concerns:

1. J.B. is cognitively challenged. He has difficulty with learning and problem solving. This makes the parenting task more daunting for him as he is limited in his ability to understand the needs of the children or how to seek information that would assist him when faced with situations that would require developing a course of action. This impairment is most likely the result of deprivation as a child, he only attained a grade two education.
2. J.B. is very limited in his ability to perspective take or having a capacity for empathy. It is easy for him to place expectations for adult like behavior on the children and becoming easily frustrated when they do not behave accordingly. He is limited in his ability to understand and respond appropriately to the emotional/developmental needs of a child. He is most likely absent emotionally from the experience of the child.
3. J.B. would have difficulty being able to provide consistent limits and discipline within the home. His response to issues that require discipline is more a tendency to become frustrated and respond with anger.
4. Monitoring of the children's behavior is also a deficit area for J.B. which may be part of the reason why so many of the referrals were of this nature.
5. He is obviously a socially isolated individual who has little in the way of social support. Therefore his ability to cope when stressed is negatively impacted as he literally has no one to rely on for advice that could assist him

6. Due to his limited personality resources J.B. is easily prone to stressful situations and his coping strategies are deficient. He tends to respond impulsively and without thinking through potential consequences of his behavior.

As a couple and Family Dynamics:

Parenting Strengths and Concerns based on Collateral Information:

Strengths:

1. The couple is able to demonstrate motivation towards learning both in the past and at present.
2. They are engaged in various parenting programs through Parent's Place, Family Skills, and the Fells.
3. K.B. is continuing with her upgrading efforts and appears to be making progress.
4. It has been noted that the parents genuinely care and love their children.
5. The couple has not been involved in any criminal activities.

Concerns:

1. It appears that the children have been negatively impacted by the lack of effective parenting by K.B. and J.B. This is evident in their out of control behaviors which led to intervention attempts both here and in *.

2. The couple appears to have significant relationship issues, which negatively impact their capacity to parent. Communication and problem solving are two issues, which have been identified. They appear to not be able to work together on the parenting task. Domestic violence has also played a significant role and it appears that the parents have been poor models of appropriate behavior for their children.
3. The children appear significantly delayed in their social skills and education. It is telling that the schools are seeing a notable improvement in both these areas over the short time the children have been in care.
4. The couple's constant moving has likely contributed to the children's stress and lack of development.
5. It appears that there are significant attachment issues between K.B. and the children that impede their development. This had been noted more with L..
6. It is also notable that in spite of the parents being strongly motivated in the past and having taken many programs that their skills do not seem to improve and they resort to ineffective parenting practices.
7. It appears that they need full time outside support in order to parent effectively.

Recommendations:

It is my belief that in spite of the couple's current level of motivation to make change that most likely they will continue on parenting as they have done in the past. I believe the description outlined in the report from * suggests that they would need consistent ongoing support in order to provide for both stability in the home and needed parenting strategies to enable the children to develop and grow to their potential.

The fact that the children have responded so positively in a short period of time in temporary foster care is indicative of the deprivation they have experienced from home. K.B. and J.B. are not malicious or bad people. They are more victims of their past than intentionally poor parents. They both love and are attached to their children and their deficits disable good enough parenting. It is a tragic circumstance.

With these comments in mind I offer the following recommendations:

1. I believe that it is in the best interests of the children that they come into permanent care and custody.
2. If the boys are able to remain for an extended period of time in their current placement I believe they would benefit immensely.
3. The children should have counseling to assist them in making this transition. A. may be a bit young for this but the older two may benefit. I can see a need especially for L..
4. If possible I think it best that the children have ongoing contact with their parents. Visitation might take various forms depending on the children's level of maturity, adjustment and the parents' cooperation.
5. If the children are returned to the parents I believe the best intervention at this time, for the mother is some in depth counseling concerning her background issues and for the father some anger management training. They should also continue with their current programs."

Minister's Plan of Care:

[23] The Minister is requesting that the children be placed in the permanent care and custody of the Agency (the Province). Reasons for this have been referenced

earlier. The Minister is seeking an adoptive home which will support an “openness agreement”. They would provide ongoing supervised access between the parents and the children until an adoptive home is secured. The foster parents will ensure that the children’s education, medical and dental needs are met. The Minister’s agents will arrange individual counselling for L. and A. to deal with their emotional and psychological issues.

[24] The Minister believes...

“...Despite the couple’s current level of motivation to make change, it is likely they would continue to parent as they have done in the past. The Agency feels that the parents would require years of intensive therapeutic intervention and counselling to deal with their own personal and historical challenges. Due to the age of the children and their ongoing need for mental health support, academic guidance, socialization and structure, it is felt that permanent care and custody is the only option to ensure that their needs are met.”

Parent’s Plan of Care:

“Disposition Order sought:

K.B. is seeking an Order pursuant to Section 42(1) of the **Children and Family Services Act** for the children, A., born February *, 2004, S., born January *, 2002 and L., born June *, 2000 to be placed in the temporary care and custody of the Agency pursuant to Section 42(1)(e) for a specified period of time, namely, until the end of the school year in June, 2011 and that K.B. and J.B. have access to the children in their home on weekends during the period of temporary care, and that

the children then be returned to K.B. and J.B. pursuant to Section 42(1)(b) for a specified period of time under the supervision of the Agency in accordance with Section 43. “

[25] They are prepared to take a number of steps to alleviate parenting concerns.

- Continue individual and couples counselling;
- J.B. to participate in anger management counselling and as a couple for effects of family violence on children;
- They will take and participate in programs at the Tri-County Women’s Centre such as self-esteem and parenting;
- They will get the children involved in community programs and referrals to mental health counselling;
- They will acquire stable residency;
- They will supervise their children and make sure they attend school regularly;
- Routines and proper discipline for the children will be established;
- They will have the children attend cubs, scouts and girl guides and programs offered through their church;
- They will continue marriage and parental counselling through their church.

[26] There is evidence the parents have taken a pro-active approach towards improving their parenting. The love they have for their children is not in question.

[27] The children have been doing well in foster care. For example, L.'s principal has seen improvements in his behaviour and appearance. He has had a lot of dental work and eyes tested resulting in new glasses. Both L. and A. have psychological issues that are being addressed by the foster parents.

THE LAW:

“Section 42(1): Disposition Order - Children and Family Services Act

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 specified period, in accordance with Section 43;
- (c) 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 Section 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 (c) for a specified period, in accordance with Sections 43 to 45;
- (f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

Sections 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 bases its 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.

THE CASE LAW GENERALLY:

“C.A.S. (Halifax) v. **Fairn** (not reported) 1992 F.H. (CSA/CAS)(Daley, J.F.C.)

The purpose of the C.F.S.A. is the protection of children. As a result, with the exception of providing whether or not a child is in need of protective services, the welfare of the child is the top priority. See RE: Sarty (1974), 15 N.S.R. (2d) 93 and **Children’s Aid Society of Halifax v. Lake** (1987), 45 N.S.R. (2d) 361 (N.S.C.A.). The C.F.S.A. promotes the integrity of the family but only in circumstances which will protect the child. When the child cannot be protected as outlined in the C.F.S.A. within the family, not matter how well-meaning the family is, then, if its welfare requires it, the child is to be protected outside the family.”

C.A.S. v. Emmerson (1991), F.H. CFSA/CAS, (Levy, J.F.C.) (unreported), p. 19:

The very obvious thrust and philosophy of the **Act** is to assure that parents and children are allowed to stay together unless for clear and important reasons such a course is antithetical to the child’s best interests. Integral to the legislation is the reasonable provision of the services (section 13) that are not necessary to accomplish this task.”

The **Act** makes clear in a host of ways, not least in 42(2)... that the severing of parental rights is to be a last step when all reasonable steps to provide services have failed, been refused, or are clearly inadequate to protect the child.”

Services to the Family:

[28] In discussing the use of services, our Court of Appeal has again offered direction in *Nova Scotia (Minister of Community Services) v. L.L.P.* [2003] N.S.J.

No. 1 at paragraphs:

“The goal of ‘services’ is not to address the parents deficiencies in isolation, but to serve the children’s needs by equipping the parents to fulfill their role in order

that the family remain intact. Any service-based measure intended to preserve or reunite the family unit, must be one which can effect acceptable change within the limited time permitted by the **Act** Ultimately, parents must assume responsibility for parenting their children. The **Act** does not contemplate that the Agency shore up the family indefinitely.”

[29] The Court of Appeal in **J.F. v. Children’s Aid Society of Cape Breton**

(*Victoria*) [2005] N.S.C.A. 101 made the following observations at paragraphs 17

and 18:

“The maximum time limits for a child welfare proceeding are set out in s. 45 of the **Act**: twelve months for children under six years of age and eighteen months for those between six and twelve years. At the end of the statutory period a court must either dismiss the proceeding or order permanent care and custody. The time frames within which the proceeding must be resolved are necessarily short in deference to the ‘child’s sense of time,’ as is recognized in the recitals to the **Act**:

AND WHEREAS CHILDREN have a sense of time that is different from that of adults and services provided pursuant to this **Act** and proceedings taken pursuant to it must respect the child’s sense of time;

Orders for permanent care are not limited to situations where there is no hope of parental improvement. The question is whether adequate parenting can be achieved within a reasonable time frame. That period is presumed to be the statutory time limited (**Nova Scotia (Minister of Community Services) v. L.L.P.**, [2003] N.S.J. No. 1 (C.A.)(Q.L.)).”

CONCLUSIONS/DECISION:

[30] This is a disposition decision under the **Children and Family Services Act**. There is evidence of numerous services having been offered to the Respondents with state involvement starting in 2004 in *.

[31] At the five day stage of this proceeding, the Minister agreed the children would remain with the Respondent mother, subject to friendly supervision. The Respondent father was not to reside with them but would have supervision access approved by the Minister. This order continued following the conclusion of the interim hearing.

[32] These terms did not work out as the Minister found it necessary to apprehend the children with them being placed in care by order rendered on the 23rd day of February, 2011. This continued through the protection hearing to disposition and the children remain in a foster home.

[33] Apprehension was necessary because of reports of the children running around the neighbourhood saying they were hungry and asking for their mother. She sometimes left her 10 year old in charge. Attending the home, agents

discovered the home to be in a “disgusting” state and the mother had no bedroom for herself but slept on the couch. There was a history of moving from one house (apartment) to another.

[34] In addition to lack of care there was inability to manage the children’s behaviours and understand their physical and emotional needs. There has been evidence of domestic violence between the parents and concern over the children’s physical well-being because of this. The parents’ tempers and neglect have also been referred to.

[35] The parents are back together and they now say the apprehension was a wake-up call. That they are willing to cooperate and learn to attend to their children’s needs. Examples of what they have done have been presented in evidence. They will continue with individual and couples counselling which has been a regular occurrence since March, 2011. The Respondent father will take and participate in anger management counselling arranged through the *. He was to take a three day program for men in June.

[36] Both parents would continue to take courses on various aspects of parenting. The Respondent mother will take a self-esteem course and they will involve the children in sports and counselling for self-esteem and anger management and other issues.

[37] Schooling will be fostered and supervision and family routines will be established.

[38] Marriage and parental counselling has been arranged through their church.

[39] During the course of their involvement, the Minister provided family support (worker) services, family therapist counselling, referrals have been made to a pediatrician, and a child psychiatrist in relation to the child L.'s behavioural issues. Other services were to help with issues of domestic violence, parenting courses, marriage counselling and mental health.

[40] These are the type of services the parents plan to continue and participate in if the children are returned to them. The issue is whether the participation will improve parenting within the statutory time limits of the **Act** if supervision were

ordered. In this particular case, the ages of the children would set that limit to twelve months [see section 43(4)].

[41] The question then is, can the parents who were given the opportunity to resolve their domestic issues and parent their children by the interim order in December of 2010, now start over and do it within a year? According to the parental assessment, they would require long term support and may revert to their old parenting style which has been described earlier. The expert evidence is that “they would need consistent ongoing support in order to provide for both stability in the home and needed parental strategies to enable the children to develop and grow to their potential”.

[42] The **Act** does not contemplate on-going services but services to allow for adequate parenting without supervision within a reasonable period of time. Considering the history of the Minister’s involvement, the professional report and other reports (exhibits) and the evidence of all the witnesses, the Court does not believe the parents can achieve adequate parenting within the time limit provided in the **Act**. The children’s best interests are that they remain in the care of the Minister. Accordingly, permanent care and custody is ordered with no access.

Obiter

[43] The parents have had regular access to the children and the Minister's Plan of care has indicated they would be looking for an adoptive home who will support an openness agreement. This means a home will be looked for that will agree to an on-going access schedule and relationship between the Respondents and the children. The order for no access is a technical matter to foster adoption which is in the children's best interests.

[44] The Court agrees with the assessor, Mr. Graham, when he says:

“The fact that the children have responded so positively in a short period of time in temporary foster care is indicative of the deprivation they have experienced from home. K.B. and J.B. are not malicious or bad people. They are more victims of their past than intentionally poor parents. They both love and are attached to their children and their deficits disable good enough parenting. It is a tragic circumstance” ...

“...If possible, I think it best that the children have ongoing contact with their parents. Visitation might take various forms, depending on the children's level of maturity, adjustment and the parents' cooperation.”

JOHN D. COMEAU

JUDGE OF THE FAMILY COURT