FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. M.R.*, 2017 NSFC 17

Date: 2017-05-04
Docket: FKCFSA No. 096243
Registry: Kentville

Between:

Minister of Community Services

Applicant

v.

M.R. and M.K.

Respondents

Restriction on Publication: Pursuant to s. 94(1) of the *Children and Family Services act*, S.N.S. 1190, c.5.

Judge:	The Honourable Judge Jean Dewolfe
Heard	April 10 & 11, 2017, in Kentville, Nova Scotia
Counsel:	Sanaz Gerami, for the Applicant Nicole Mahoney, for the Respondent MR Donald Fraser, for the Respondent MK

By the Court:

Introduction

[1] This is an application by the Minister of Community Services ("the Minister") for permanent care and custody of two children, C., who is now almost four years old, and A., who is almost two. The Respondent M.R., is their mother, and M.K. is their father. The Respondents oppose the Minister's application. M.K. supports M.R.'s plan to have the children returned to her care.

Background

[2] The Respondents are young parents, 22 and 20 years of age respectively; they were 16 and 18 years of age when they became parents. Both Respondents had had child protection involvement as children; in M.K.'s case that involvement had been extensive.

[3] The Minister's concerns related initially to domestic violence, substance abuse and mental health. They received a number of referrals in 2014 and 2015 with respect to the Respondents following C.'s birth.

Current Proceeding

[4] On June 1, 2015, shortly after A.'s birth, the Minister applied for a protection finding pursuant to S.22(2)(b), (g), and (ja) of the *Children and Family Services Act* ("the Act"), seeking temporary care of the infant, A., and a supervision order in favour of M.R.'s mother, S.C., with respect to the child, C.. M.R. was also residing with S.C. at that time. An interim order was granted on June 3, 2015 placing A. in temporary care and custody, and C. in S.C.'s care subject to supervision.

[5] On July 3, 2015 the Minister applied to vary the Interim Order to terminate the supervision of S.C. with respect to C. due to her stated inability to continue to provide care for him.

[6] On July 7, 2015 an Interim Order for temporary care and custody of both children was made. M.R. did not take a position, and M.K., although he had been provided with notice, did not appear. A protection finding was made on September 9, 2015 pursuant to s. 22(2)(b) and (ja) of the Act, with M.R. consenting and M.K. not being present despite notice.

[7] The initial Disposition Order, dated December 2, 2015, maintained temporary care and custody of both children and ordered supervised access, family

support and individual counselling for both Respondents as well as couples counselling. M.R. consented to the order and M.K. did not appear in court. That order was essentially maintained on multiple reviews until present.

[8] On May 16, 2016 M.K. attended court for the first time and consented to the renewal of the disposition order on review.

[9] On July 6, 2017 the Minister filed an Amended Plan of Care seeking permanent care and custody of the children due to the minimal engagement and progress in services by M.R., and M.K.'s almost complete lack of engagement in services.

[10] In November 2016 a contested disposition hearing commenced just prior to the expiration of the one year statutory timeline. A copy of the Minister's Amended Plan of Care was entered as an exhibit. The matter was then set over to January 30, 2017 for the continuation of the hearing. On that date, the parties agreed to participate in a Settlement Conference with Judge Melvin, instead of proceeding with the hearing. Unfortunately, that Settlement Conference was not successful. Judge Melvin then recused herself, and the parties agreed to continue the hearing before a different judge. Trial dates were set before me on April 10 and 11, 2017.

[11] The children have now been in foster care for almost two years. M.R. has had supervised access but has been late or cancelled many visits. M.K. has not seen the children for over a year, since February 2016.

Evidence

Minister's Evidence

Susan Squires

[12] The Minister introduced expert reports from Susan Squires, Psychologist, as well as a list of the Respondents' 2015 appointments with Ms. Squires.

[13] Ms. Squires was qualified, by consent, as an expert in the area of conducting psychological and psychoeducational assessments of adults, including testing to determine the cognitive abilities of adults.

[14] She testified that M.R. had participated in a "Positive Relationships" program run by Ms. Squires' office in the summer of 2015. In the fall of 2016 the parties were referred for individual and couples counselling by the Agency, primarily to address concerns of domestic violence and relationship issues. During their sessions in September and October 2016, Ms. Squires questioned the Respondents' comprehension of the concepts presented. As a result, counselling

was suspended while Cognitive and Achievement testing was scheduled. M.R. completed this testing in January 2017. In her January 25, 2017 report, Ms. Squires concluded,

> "She should not…have difficulty understanding rudimentary reading material…(and) she can advocate for herself…"

[15] M.K. did not complete his testing.

[16] Ms. Squires testified that while the parties made some progress in counselling in September and October 2015, she had concerns that it was "too little, too late".

[17] Ms. Squires defended her decision to test for cognitive ability instead of continuing counselling. Ms. Squires testified that in January 2017 the hearing was supposed to begin. Due to M.R. missing, or being late for testing appointments in December, M.R. could not participate in individual or couples counselling in January. M.K. did not complete his testing, so couples counselling could not have resumed even if M.R. had completed her testing on time in December.

Andrea Munroe

[18] Andrea Munroe, a family therapist, counselled M.R. between February 2016 and May 2016. This ended as M.R. had covered all the material which had been

identified by Ms. Munroe in relation to healthy relationships, assertiveness and preparation of a safety plan in relation to domestic violence. The counselling ended with M.R. having made "no progress" according to Ms. Munroe, and with four ongoing goals, ie. to seek counselling at Chrysalis House (local Women's Shelter), to seek mental health counselling, to obtain housing through the Department of Housing and to devise a safety plan.

[19] Ms. Munroe testified that there was a discrepancy between M.R.'s words and actions, in that she still put herself at risk around her partner (M.K.). She was not engaged, did not set limits around M.K. and did not prioritize her children's needs.

Dianna Frankland

[20] Dianna Frankland, an adoption worker, testified that an access order post permanent care would deter potential adoptive placements and could very well impede adoption.

Kendra Mountain and Lael Aucoin

[21] Kendra Mountain and Lael Aucoin testified as to the Agency's ongoing interactions with the parties since 2015.

[22] Ms. Mountain was the social worker for the parties between May and September 2015. Ms. Mountain addressed the Respondents' claims that they were not offered transportation assistance to appointments. She noted that the parties at times lived on a bus route, and that they and S.C. had been offered bus tickets and taxi vouchers.

[23] The Agency's primary concern was identified as domestic violence at the outset of the proceeding. Ms. Mountain's initial affidavit notes that both Respondents had been the subject of Agency intervention as children, M.K. extensively. Their involvement with the Agency as parents started soon after C.'s birth, as a result of reports of loud arguments and police involvement due to parental conflict. There were also concerns about drug use for M.K. who had been charged with drug trafficking and had been in possession of drug paraphernalia in April 2015.

[24] At the time of A.'s birth the Agency had reports from hospital staff concerning the parents' feeding and care of A.. The Minister advised the parents that they needed to be supervised in caring for their children. M.R. and C. moved in with MR's mother, S.C.. S.C. could not commit to supervising M.R.'s care of A.. A. was therefore placed in a foster home. Ms. Mountain described how this arrangement broke down in July 2015 with S.C. advising Ms. Mountain that she

was sick and overwhelmed, and could not manage to provide the necessary care for C..

[25] C. was then placed in foster care with A..

[26] Ms. Mountain admitted on cross examination that she was not aware of any developmental concerns regarding C. when he came into care.

[27] Ms. Mountain noted that the Agency was concerned about attachment between M.R. and A., and that they attempted to address this through family support work. However, this work had limited success due to M.R. frequently missing access and family support work.

[28] Ms. Aucoin has been the Respondents' social worker since September 2015. She noted that by April 2016 M.R. was engaging in some services but the Agency was not seeing significant progress, and therefore they filed an Amended Plan of Care seeking permanent care. Neither S.C., nor any of the other family members, brought forward a plan to the Minister.

[29] Ms. Aucoin described how due to M.R. regularly missing visits they continued to have concerns about attachment between M.R. and A. She also noted that M.K. has not had access since February 2016. Ms. Aucoin testified that the Minister still had significant concerns as to domestic violence as the Respondents

had not completed couples counselling, and M.R. still did not appear to have any insight into the risks of exposure to domestic violence on her children. She noted that M.R. had only attended one session at Chrysalis House and did not actively participate in that session.

[30] Ms. Aucoin's most recent affidavit detailed her sighting of M.R. and M.K. together on March 17, 2017, and noted receiving messages from both Respondents from the same cell phone number. She also reported a conversation with M.K. on March 21, 2017 when M.K. admitted he and M.R. were still in a relationship, but stated that they were staying apart from each other until after they "got the kids back".

Respondents' Evidence

S.C.

[31] S.C., M.R.'s mother, provided an affidavit and was cross examined. She testified that she lives in a one bedroom seniors' apartment and therefore M.R. cannot stay long term and there is no space for the children. She could leave her apartment if she "had to" in order for M.R. and the children to live with her, but no plans have been made.

[32] She testified that she was too sick and stressed out to continue caring for C. when he was initially placed with her in 2015. She indicated that the Minister provided very little support, but admitted they provided bus passes and taxis to allow C. to attend daycare.

M.R.

[33] M.R. provided an affidavit and was cross examined. She testified that she has to be out of her mother's apartment by April 30, 2017, but plans to move in with her Aunt in Halifax. She indicated she was not in a relationship with M.K. "at the moment". She denied Ms. Aucoin's sighting of her with M.K. on March 17, 2017.

M.K.

M.K. initially filed an affidavit, but this was withdrawn.

Issue

[34] Have the Respondents made sufficient progress to alleviate the concerns leading to the protection finding?

Law

[35] This application is made pursuant to the *Act.*

[36] The Court is required to make a disposition that is in the child's best interests: S. 42(1). The factors which the Court must address in reaching this determination are set out in S. 3(2):

> "Where a person is directed pursuant to this Act except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:
>
> (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of the family;
>
> (b) the child's relationships with relatives;
>
> (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
>
> (d) the bonding that exists between the child and the child's parent or guardian;
>
> (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
>
> (f) the child's physical, mental and emotional level of development;
>
> (g) the child's cultural, racial and linguistic heritage;
>
> (i) the merits of a plan for the child's care proposed by an agency, including proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
>
> (j) the child's views and wishes, if they can be reasonably ascertained;

(k) the effect on the child of delay in the disposition of the care;

(l) the risk that the child may suffer harm through being removed, kept away from, returned to or allowed to remain in the care of a parent or guardian;

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;

(n) any other relevant circumstance."

S. 42(2) provides:

"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 failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child."

S. 42(3) states that:

"Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person."

S. 42(4) provides that:

"The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably unforeseeable time not exceeding the maximum time limits based on the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c.5, s.42"

[37] The Minister must prove on a balance of probabilities that there continues to be a substantial risk that the children will suffer harm pursuant to Section 22(2) of the *Act*.

[38] The test which must be applied is not whether other plans for the child will provide the best parenting, but rather whether the parents can provide good enough parenting without subjecting the children to a substantial risk of harm.

Analysis

[39] The Respondents are young parents of two young children. Their relationship has been very volatile. Affidavits filed by the Minister as well as the evidence of Susan Squires and Andrea Munroe, clearly describes two young people who are immature, and unable to put their children's needs first. It appears that S.C. was of significant assistance to M.R. in helping with C. prior to A.'s birth. Upon A.'s birth, S.C. was unable to provide the level of assistance M.R. required in order to adequately parent C. and A..

[40] M.K. has been a significant distraction to M.R. and a source of conflict. He and M.R. have focussed on their relationship to the detriment of the children.

[41] Neither Respondent has shown any real insight into the harm their behavior and dysfunction poses to their children. Neither has put any effort in making real and viable plans for the children's care. M.R. has fallen back on her mother who cannot accommodate her and the children. At trial she professed to planning to move in with her Aunt, a plan she had dismissed as completely unacceptable when discussing it with Ms. Aucoin a few months earlier.

[42] I accept Ms. Aucoin's evidence as to the indicatia of M.R. and M.K.'s relationship in March 2017, including M.K's explanation as to their circumstances. M.K. had an opportunity to refute this but did not submit any evidence. I do not accept that M.R. is committed to ending her relationship with M.K. Neither M.R. nor M.K. have made any progress in services designed to alleviate the risk of the children being exposed to domestic violence. M.R.'s behaviors do not show an appreciation of the need to focus on her children and protect them from their parents' conflict. I find that on the balance of probabilities the children would be at substantial risk of emotional harm from exposure to domestic violence (whether with respect to M.K. or future partners) and neglect in M.R.'s care.

Conclusion

[43] In summary, nothing significant has changed since these children were found to be in need of protective services.

[44] I find that the Minister provided reasonable services to the Respondents, and these were not fully utilized by the Respondents. I have no evidence that their minimal participation has alleviated any of the concerns which existed at the outset of this proceeding. While M.R. participated in services, her attendance was poor and her progress was minimal. She has continued to associate with M.K. until very recently. M.K. has participated in virtually no services and has not even visited children since February 2016.

[45] This Court finds that on the balance of probabilities the children are still at substantial risk of emotional harm due to the behaviours of their parents if returned to M.R.'s care. M.R. does not have the maturity for insight to protect her children from conflict with M.K. and has not shown that she can place their needs ahead of her own. She cannot possibly provide "good enough" parenting to these children in these circumstances.

[46] No family placements have come forward. While S.C. has expressed willingness to help care for the children, this is not a viable plan, and is insufficient to adequately protect the children given C.'s experience in her supervision in 2015.

[47] These young children need stability which M.R. cannot provide.

[48] Therefore, I accept the Minister's plan as being in the best interests of the children, and the children C. and A. will be placed in the permanent care of the Minister.

Access

[49] The parents seek ongoing access to the children.

[50] The Plan of Care of the Minister is that children will be placed for adoption without access to the Respondents. The evidence of Dianna Frankland, adoption worker, is that an access order would negatively impede the chances of adoption for the children.

[51] Section 47(2)(a) and (d) of the *Act* provides as follows:

> "47(2) Where an order for permanent care an custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that

> (a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for placement…
>
> …(d) some other special circumstance justifies making an order for access"

[52] The Nova Scotia Court of Appeal considered s.47(2)(d) of the *Act* in **Children and Family Services of Colchester County v. K.T.** 2010 NSCA 72 at paras. 39-41:

> "39 Therefore, from my reading of s. 47, three conclusions relevant to this appeal are clear. First, the Agency effectively replaced the natural parents. This puts the onus on the natural parents (or guardian) to establish a special circumstance that would justify continued access. Second, by the virtue of ss.47(2)(a) and (b), an access order must not impair permanent placement opportunities for children under 12. Section 47(2)(c) is consistent with this. It provides that if no adoption is planned then access will be available. This highlights the importance of adoption as the new goal and the risk that access may pose to adoption. Third, for children under 12, the "some other special circumstance" contemplated in s.47(2)(d), must be one that will not impair permanent placement opportunities.
>
> 40 Therefore to, rely on s.47(2)(d) as the judge did in this appeal, the (special) circumstances must be such that would not impair a future permanent placement. When then would s.47(2)(d) apply? Consider for example a permanent placement with a family member which will involve contact with the natural parent. Presuming that the adopting parents would be content with that arrangement, the adoption would not be deterred. See **Children's Aid Society of Cape Breton-Victoria v. M.H.**, 2008 NSSC 242 at para. 25.
>
> 41 In short, access which would impair a future permanent placement is, by virtue of s.47(2), deemed not to be in the child's best interest. This represents a clear legislative choice to which the judiciary must defer."

[53] There are no special circumstances so as to justify access post permanent care. The Minister is planning to place these children permanently for adoption. I find that access would impede the children's opportunity for a permanent placement. There will be no access except for a final visit as arranged by the Agency.

Jean Dewolfe, JFC