FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. S.G.*, 2015 NSFC 20

Date: 2015-03-27
Docket: FKCFSA-087502
Registry: Kentville, N.S.

Between:

MINISTER OF COMMUNITY SERVICES

Applicant

v.

S.G. and K.G.

Respondents

Editorial Notice:
Edited by Judge for grammar, punctuation & readability

Judge:	The Honourable Judge Marci Lin Melvin
Heard	February 4th, 9th & 10th, 2015, in Kentville, Nova Scotia
Final Written	March 27, 2015
Counsel:	Angela Swantee, for the Applicant, M.C.S. Donald Fraser, for the Defendant, S.G. Claire Levasseur, for the Defendant K.G. (watching brief)

By the Court:

[1] **Introduction**

[2] S.G. is the mother of two children who were aged eight and five when taken into care by way of a Protection Application dated August 21, 2013.

[3] K.G. is the father of the youngest child while the paternity of the eldest is unknown.

[4] The matters proceeded at each stage, including protection, by consent with the Respondents and the children participating in services as ordered by the Court.

[5] Throughout, the Applicant's formal position was for temporary care "… with a view to transitioning the children back into the care…" of S.G. given her participation in services and the progress she had made.

[6] This changed on October 24, 2014, the Applicant determining that S.G. had not made sufficient progress, and a Review Application was filed November 4, 2014, seeking permanent care.

[7] S.G. contested at the final review stage. The timelines have expired, and the only options for the Court are permanent care or dismiss and return the children to S.G.

[8] K.G. did not take part in the final review hearing, but his counsel indicated he supported S.G.'s plan. He is a convicted sex offender.

[9] The children are high to moderate needs, with the eldest being diagnosed with ADHD and ODD., and from the evidence of the Applicant, suffering from many difficulties. These include: hearing "… voices in her head", swearing, biting, pinching, kicking, hitting and scratching people, running away from her residence, throwing rocks at people, threatening to kill herself and others, attempting to harm herself, and "wetting to bed"."

[10] Initially when the eldest child came into care she was at the Akoma Centre, then Wood Street Centre, then "a place of safety", and then institutionalized where she has remained since December 2013. The Applicant has tried to find this child a foster care placement in the past six months without success.

[11] The youngest child has been in five placements since being taken into care. He has had numerous difficulties with his behaviour, both in his homes and at school. These include swearing, "soiling" his pants, "wetting to bed," lying, shoplifting, cannot play with other children without pulling their hair or biting, and having tantrums.

[12] Child welfare concerns date back to 2010, and earlier.

[13] **Issues**

[14] What is in the best interests of these children?

[15] If the Court orders permanent care, should there be access to S.G.?

[16] **Evidence**

[17] The Applicant called four experts, two agency workers, a family support worker and an access facilitator.

[18] For the most part, their testimony had a theme of consistency: both children loved their mother, both had special needs, the eldest child spoke constantly of loving and missing and wanting to be with her mother, the Respondent mother (S.G.) had made some improvements, the children missed each other, the Applicant had not been able to find a foster care placement for the eldest child and she'd been in an institution for six months. Further evidence was that the eldest child was highly volatile but could be calmed by the Respondent mother, S.G., even through a closed door. And the Respondent mother had worked diligently to overcome all of the obstacles that impeded her parenting abilities, in the past.

[19] Four witnesses testified for the Respondent mother, S.G.

[20] Their evidence is that S.G. is devoted to her children, does her best to care for them, and S.G.'s new boyfriend, B.C., testified to do anything in his power to support S.G., including removing himself from their relationship if it means her children can be returned.

[21] The Court finds B.C. was soft-spoken, calm, measured, and clearly supportive of S.G.

[22] S.G. gave evidence on her own behalf. In the time since the children have been removed from her care, she has worked at improving all aspects of her life for herself and her children. This includes:

(a) had and achieved a goal of getting off welfare and attaining full time employment,
(b) dealt with her feelings of embarrassment and sadness at having children removed from her;
(c) made what she believed to be a right choice with respect to a new partner, a man she had known for a year;
(d) was prepared to end her relationship with this new partner if she cannot have her children with him there;
(e) found a better home for herself and children;
(f) worked to keep it clean and tidy;
(g) found other homes for most of her pets;
(m) completed the S.T.O.P. program;
(n) completed the 'Promoting Positive Behaviours in Children' course;
(o) completed a parenting course which included going to weekly classes for approximately a year and taking one course twice;
(p) completed interviews for a parental capacity assessment;
(q) had at least eight sessions with a psychologist;
(r) met with a counseling therapist weekly or bi-weekly since March 2014;
(s) met with a family support worker weekly or bi-weekly since April 2013 and learned new techniques to deal with her children;
(t) met with agents of the Applicant when required;
(u) completed an anger management course;
(v) completed what appears to have been a mental health assessment for which she had not received the results at the time of trial;
(w) attended the one case conference the Minister had invited her to attend;
(x) was concerned her youngest child was not receiving the counseling play therapy he required given all this time he has been in care and his special needs;
(y) determined to learn as much as she could about being a better parent, as is clear in her evidence on cross-examination.

[23] The vast majority of this work was done prior to the Applicant's decision on October 24th to seek permanent care. The Court observed S.G. very closely during her testimony and found S.G. to be a credible witness, strong and forthright in her desire to be a better parent, to use the information she has learned to the best of her

ability, to continue to learn more and accept help, and to have her children returned to her care.

[24] **The Law**

[25] **(a) Legislation – *The Children and Family Services Act*, R.S.N.S., ch 5.**

[26] In reaching a decision regarding the future care of the children, as argued by the Applicant, the Court is to be guided by what is in the children's best interests.

[27] The Court has reviewed s.(3(2)) of the ***Children and Family Services Act*** and applied those factors, where applicable, to the issues in this matter.

[28] At the conclusion of the disposition hearing the Court must make an order in the child's best interests, and at that stage has numerous options.

[29] However, the time has since run out and at present the Court has but two available options:

(a) dismiss the matter;

.....

(b)the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

[30] The Court has reviewed the legislation pertinent to this matter, in particular what a Court must consider in making an order for permanent care, (s. 42(2)(3)), services to promote the integrity of the family, (s.13), applicable criteria upon review (s. 46), and the requirements to make an order for permanent care with no access, (s. 47(2)).

[31] Jurisprudence

[32] **In (*Minister of Community Services v. C.M. and G.M.*** 2011 NSSC 112 paragraph 72), the Court states:

> "…Permanent Care Orders should only be granted in cases where there is clear, convincing, and cogent evidence supporting the conclusion that all reasonable measures, including placement within the extended family have been exhausted."

[33] In addition, the Court must determine that the services provided in the course of this proceeding have been tried and failed, or have been refused by a parent. Ultimately, the Court must decide, at the time of making a disposition order, whether the children are in need of protection under one of the enumerated grounds of section 22(2) of the Act.

[34] **In <u>Children's Aid Society of Pictou County</u> v. <u>A.J.G.</u>** [2009] N.S.J 363, Wilson, J.F.C., states:

> "In making such a determination, the court must always keep in mind that the 'standard' is 'good enough parenting' and 'manageable risk'."

[35] The Court must be satisfied on a balance of probabilities that S.G. is capable of employing good enough parenting with her two children and capable of managing any potential risks, in order to return the children.

[36] **In <u>Minister of Community Services</u> v. <u>C.M.,</u>** 2001 NSSC 112, the Court held that the Respondents had successfully completed sufficient remedial services to satisfy the Court that they have gained insight into the domestic issues, substantially eliminating or reducing the risk. The Court confirmed that the evidence showed that the Respondent had changed for the better and that this change is substantive, sufficient, and real enough for the Court to be satisfied that the children were no longer in need of protective services at that time and can be safely returned home.

[37] The Court must determine on a balance of probabilities if the Applicant has made out a case for permanent care of these two children, taking into account not only substantial risk, and whether it has been reduced or eliminated through remedial services and insight gained by the Respondent parent, but also if the parenting that can be provided by S.G. is "good enough" parenting, all under the umbrella of what is in the best interests of these children.

[38] **In *F.H. v. McDougall,*** 2008 SCC 53, at para. 49, the Court held:

> "… [I]n civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred..."

[39] ***In Nova Scotia (Minister of Community Services) v. L.L.P.,*** [2003] N.S.J. No. 1 (C.A.), paragraph 25, the Court held:

> "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 fulfil 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. If a stable and safe level of parental functioning has not been achieved by the time of final disposition, before

> returning the children to the parents, the court should generally be satisfied that the parents will voluntarily continue with such services or other arrangements as are necessary for the continued protection of the children, beyond the end of the proceeding. Ultimately, parents must assume responsibility for parenting their children. The Act does not contemplate that the Agency shore up the family indefinitely."

[40] ***In Nova Scotia (Community Services) v. S.J.R.,*** 2014 NSFC 20 (CanLII), Melvin, JFC, the Court held:

> "Keeping in mind the standard is "good enough parenting" and "manageable risk", the court finds on a balance of probabilities the Applicant has not shown there exists a real possibility of risk if this matter were to be dismissed and an order under the MCA be granted. The court is not satisfied that less intrusive alternatives have been effectively and fairly employed.
>
> Further, the Respondents have completed sufficient remedial services to satisfy the court that they have gained insight into the domestic issues, substantially eliminating or reducing the risk. Having considered and weighed all of the evidence, the court finds the Respondents have changed for the better, the change is substantive, sufficient, and real enough for the court to be satisfied that the children are no longer in need of protective services at this time and can be safely returned home to the care of S.J.R. pursuant to the MCA application filed with this court. The matter is dismissed, and the MCA order as granted by the court is attached hereto."

[41] The law is clear, both from a legislative and jurisprudence stand point: the best interest of the child is the heart beat of any matter involving children before this Court. The evidence a Court considers in making a determination is meant to reflect that.

[42] Of all the opinions and testimony the Court most often hears, the voice of the child is rarely one of them. Children seldom testify. Children hardly ever file Affidavits. The Act mandates a child sixteen or older is a party to a proceeding, and at aged twelve a child shall receive notice of a proceeding and, upon request by the child the Court may order that the child be made a party and represented by counsel, where the Court determines it is desirable to protect the child's interests. Young children are not even considered parties and until the age of twelve their thoughts, feelings, and concerns are not put before the Court in any formalized fashion.

[43] This is a travesty. Children have the right to be heard. A child's wishes will not sway the Court into making a decision that would not be in that child's best

interests. But the voice of the child is a significant piece of the puzzle and deserves recognition and consideration. The Court is not advocating a child should be called as a witness. That is a traumatic process and children should not be subjected to such distress. But there should be a way for a neutral friend of the Court to provide when possible clear and cogent testimony as to what the child wants; the Court needs to hear the voice of the child.

[44] In this matter, the Court has heard the voice of the eldest child through some of the witnesses for the Applicant. It is loud and clear: she wants to be with her mother, S.G. Her mother calms her down, her mother sings to her, plays the piano for her, and even the sound of her mother singing on a tape relaxes her. The eldest child wants to be with her brother. The youngest child wants to be with his mother, S.G., also. This is necessary evidence though it paints perhaps but a small corner of best interests picture.

[45] Analysis of the Evidence

[46] **Applicant's change in position to permanent care, October 24, 2014**

[47] The position of the Applicant with respect to permanent care changed in October 2014. The Court was interested in why this changed.

[48] **Applicant's position previous to seeking permanent care**

[49] On August 29, 2014, Kendra Mountain filed yet another Affidavit on behalf of the Applicant supporting the continuation of a temporary care order with a view – as stated by the Applicant – to transitioning the children back to the care of S.G.

[50] Although the Applicant was intent on transitioning the children back into S.G.'s care, the Affidavit noted the Minister had significant concerns.

[51] The Applicant noted again at the Court appearance on September 3, 2014, that S.G. had a lot to do in a very little time. Despite this, the Applicant was still intent on returning the children to her care.

[52] In the original Plan of Care dated January 13, 2014, the Applicant sought to have S.G. participate in a parental capacity assessment and follow any recommendations outlined in the assessment. The assessment was completed approximately June 2014. One of the recommendations at that time was that she remain single and committed to raising her children, for a period of one to two years, as opposed to fostering a new relationship with a new partner.

[53] The evidence in approximately September 2014, in that S.G. entered into a new relationship and introduced the boyfriend to the children.

[54] S.G. testified she thought the recommendation "invaded her human rights". The Court finds what she likely meant was "infringed upon" rather than "invaded", but her sentiment was clear.

[55] The Applicant argued this statement demonstrated S.G.'s lack of focus on the needs of her children. The Court finds otherwise. S.G. was clear in her testimony she would end the relationship with B.C. if it meant she could have her children returned.

[56] There is no evidence any agent of the Applicant or witness for the Applicant ever met her new boyfriend, B.C.

[57] The Court has weighed this recommendation against the best interests of the children. If it is in the best interests of these children to be in S.G.'s care, then S.G. has a duty and obligation to make certain the children are safe, happy, and secure. This does not mean she cannot have a boyfriend. In fact, the Court finds, that a boyfriend who is kind, gentle and supportive of S.G. and the children, would be an asset in their lives. The Court finds – despite the recommendation that she not have a boyfriend for one to two years - to determine a person is unable to have a partner to assist her through life, with her children, is arbitrary and capricious, especially when the boyfriend's character and potential has not been assessed. It may well be in the best interests of the children should they be returned to her care to have a period of time where the children are alone with their mother so the new boyfriend could be introduced gradually, but three months would be a more appropriate "phase in" time, not one to two years. Further, the parental capacity report was completed in June 2014, and significant time has passed wherein S.G. has completed and been involved in remedial services potentially giving her a better understanding of the children's needs.

[58] The Court finds this particular recommendation exceeded the parameters extended the assessor. However in the end it is of little consequence: S.G. has had the support of B.C. while she has tried to get through this time in her life, but both S.G. and B.C. have given sworn testimony which the Court accepts, that they will end their relationship if it means S.G. can have her children back.

[59] The children had their first overnight visit with S.G. on September 19, 2014. There were the usual squabbles that might be anticipated between children,

especially given the high degree of uncertainty in their lives since coming into care, and they were used to being apart, not together.

[60] S.G. told Kendra Mountain the children would be grounded the next weekend because of their squabbling. Overnight visits continued through the month of October.

[61] Of concern to the Court, no matter how it is rationalized or justified, was that the child care worker told the eldest child - who was approximately nine years old at the time and has significantly high needs - near the end of October 2014, that the Applicant was seeking permanent care and custody and the little girl would not be having any more overnight visits with her mother, S.G.

[62] The evidence of the Applicant was that for a month preceding that until October 25, 2014, the eldest child had exhibited good behaviour in the institution and was rewarded with a pet fish. Subsequent to that her behaviour regressed. The Applicant blames the regression on S.G. for incidents that happened while the children were visiting with her.

[63] There is no direct evidence - for which the Applicant accepts responsibility - reflecting how the child in care worker's information directly affected the child, but there is clear and cogent evidence of the Applicant that this child loves her mother and wants to be with her.

[64] Of further interest to the Court, was when case aide worker, Connie McCammon overheard the eldest child whisper to her mother during an access visit on November 1, 2014 "…what was going to happen if [she and her sibling] … didn't get to go home."

[65] In Ms. Mountain's Affidavit of December 22, 2014, she states: " Ms. McCammon intervened and told [the eldest child]… that she was not to discuss this…" showing this witness for the Applicant understood that this is not information that should be discussed with young children.

[66] Purely as obiter, in a Maintenance and Custody application, the parties are routinely cautioned about sharing the details of the Court proceedings with their children. This information is not a burden a child should bare.

[67] The Court can only wonder why the Applicant would choose to share this sensitive and no doubt troubling information with a little girl, who may think that is her future, not understanding the litigation process.

[68] The Court finds the Applicant's decision to share this information was inappropriate and may well have contributed to the child's regression and state of upset.

[69] In addition S.G. is criticized by the Applicant for treating the joint sessions with Ms. Blackler and the eldest child as merely another opportunity to spend time with her eldest child as opposed to working on their relationship.

[70] The Court finds this subjective, illogical and unnecessarily critical. If S.G. is using the time to connect, reconnect, clearly enjoying any time she can spend with her eldest child, is this not showing the child she wants to be in her company? Showing support? Ergo working on their relationship? Further, S.G. refutes this interpretation of her counseling sessions and says she was making use of her time to further her relationship with her child. The Court accepts S.G.'s evidence on this issue.

[71] There was evidence that S.G., during one of her access visits, involved the youngest child in baking cookies. She was criticized because she apparently gave the child a few extra cookies and he is apparently overweight. The Court finds S.G. was trying to engage her child, and be an active caring mother.

[72] The Applicant's decision to seek permanent care was made at a risk management conference on October 24, 2014. The evidence of the Applicant is that at the case risk management meeting on October 24, 2015, it was determined by the Applicant that despite S.G.'s efforts, she had not made sufficient improvement in her parenting skills in order to match the high needs of her children, stating: *"*Given the extensive history of chronic neglect, domestic violence, inadequate supervision, risk of sexual abuse, untreated mental/emotional health of the children and refusal to access services and the resulting trauma suffered by the children, the agency will seek an Order for Permanent Care and Custody with no access with a view to adoption of [the children.]"

[73] It is of interest to the Court that with the significant history of child welfare concerns the Applicant has had over the years pertaining to S.G. that the scenario could so rapidly change from August 29th to October 24th 2014. The Court disagrees with the Applicant's conclusion that S.G. has not made enough progress.

The Court finds S.G. has taken every course, participated in every service, and with a "hunger" for knowledge on how to better herself for the sake of her children, did as much as she could at the same time obtaining full employment, and getting off welfare. The Applicant argued S.G. had missed appointments. As Lynch, J., noted in **N.S.C.S v. S.N. 2011** NSSC 198 CanLII, ***supra.***, "We do not take children permanently from their parents for failure to participate in services."

[74] The extensive history as noted above will always exist. It is what happened in the past and that cannot be changed. The Applicant was well aware of this history on October 23, 2014, before they changed their mindset to one of permanent care. The Court finds S.G. has made improvement in her parenting skills.

[75] **Conclusion**

[76] The Court has considered all of the evidence, Affidavits, reports, and documents filed, the evidence relating to K.G. who did not participate but through counsel indicated he supported S.G.'s plan, as well as ***vive voce*** evidence.

[77] The Court has to be concerned with what is in the best interests of the children. That is the heartbeat of all child welfare proceedings in this country. The standard is "good enough parenting" and "manageable risk". "Good enough" means a standard that would protect the children and provide for their needs. Section 42(2) of the Act requires the Court to be satisfied that less intrusive alternatives than permanent care would be inadequate to protect the children.

[78] The Court finds S.G. has participated in many services, has completed sufficient remedial services to satisfy the Court that she has gained insight into the domestic issues, substantially eliminating or reducing the risk. Her parenting may not be perfect parenting, but it is good enough parenting. The Court finds S.G.'s plan to care for the children is adequate to protect the children.

[79] Having considered and weighed all of the evidence, the Court finds S.G. has changed for the better, the change is substantive, sufficient, and real enough for the Court to be satisfied that the children are no longer in need of protective services at this time and can be safely returned home to the care of S.G. Before returning the children to the parents, the Court should generally be satisfied that a parent will voluntarily continue with such services or other arrangements as are necessary for the continued protection of the children, beyond the end of the proceeding. S.G.

has testified she is willing to continue at the very least with Debbie Reimer and Ms. Reimer has confirmed she is willing for this to continue as well.

[80] There is no jurisdiction at this time to do anything but dismiss or order permanent care. However, the Court strongly suggests the Applicant continue to be involved with this family under the umbrella of section 13 of the Act specifically, but not limited to, with Beth Roberts to continue to assist with the Positive Parenting cards program. The Applicant is well aware of the high needs of these children. It is therefore in the best interests of the children for the Applicant to maintain less intrusive involvement to promote the integrity of the family through section 13 of the Act. Further the Court strongly suggests that K.G. have only limited supervised contact with the children until otherwise determined by the Court, that S.G. continue to be involved with Debbie Reimer, and that S.G. and her boyfriend live separately for at least a three-month window to give the children a chance to re-adjust with S.G. This is not to infringe upon S.G.'s rights. It is to allow the children to get to know one another and S.G. before another person is added to the mix.

[81] The Court finds on a balance of probabilities the Applicant has not shown there exists a real possibility of risk if this matter were to be dismissed. The Court finds it to be in the best interests of the children and the least intrusive alternative to be together with S.G. rather than face an uncertain future in foster care.

[82] The matter is dismissed in the best interests of the children, and a ***Maintenance and Custody Act*** order with terms in the best interests of the children, as granted by the Court will be issued forthwith.

_____

Marci Lin Melvin, J.F.C.