

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** Nova Scotia (Community Services) v. O.K., 2013 NSFC 22

**Date:** 20131106

**Docket:** FKCFSA No. 083768

**Registry:** Yarmouth

**Between:**

Minister of Community Services

Applicant

v.

O.K., C.M.M. and V.L.J.

Respondents

**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, JFC

**Heard:** October 8, 2013, in Digby, Nova Scotia

**Counsel:** D.B. MacMillan, Esq., for the Applicant  
O.K., Respondent, unrepresented

## **Introduction / The Application**

[1] This is a disposition review hearing. The original Disposition Order was made on the 16<sup>th</sup> day of April, 2013. This was a Temporary Care and Custody Order whereby the children A., d.o.b., April [...], 2007, and B., d.o.b., October [...], 2011 were placed in the temporary care of the Minister. C., d.o.b., July [...], 2008, was placed in the temporary care of the paternal grandmother, R.M. Access to O.K., who is the mother of the children, was to be on terms and conditions acceptable to the Minister of Community Services.

[2] By order dated June 25, 2013, the disposition was varied to that portion of the application that pertained to the child C., d.o.b., July [...], 2008. Simultaneously, an order was made under the *Maintenance and Custody Act* between the mother and father that the father C.M.M. have custody of the child C. with supervised access to the mother by a person acceptable to the father. This term was not to be varied without prior notice to the Minister. Temporary care and custody for the other children was confirmed.

[3] On September 10, 2013 temporary care and custody was to remain with the Minister as it was understood the paternal grandmother, when offered, could not care for the remaining two children. At this time Oliver Janson was released as counsel of record for the Respondent mother O.K.

[4] On review, the Minister is asking for permanent care and custody of A., d.o.b., April [...], 2007 and B., d.o.b., October [...], 2011.

**Issue: Permanent care and custody**

**The Facts**

**Protection Hearing:**

[5] The protective services order was made by consent on January 29 2013 at which time the Respondent mother had counsel. The children were found in need of protective services pursuant to the *Children and Family Services Act* s. 22(2)(b), (g), (ja) and (k).

[6] The Respondent has had two counsel during the course of the protection and disposition stages. Both have withdrawn during this period of time. The Respondent V.L.J. has not participated after having received notice.

[7] Evidence at the protection hearing was presented by way of affidavit, sworn to by an agent of the Minister. On October 26, 2012 the Minister received a complaint from the paternal grandmother that the Respondent mother had asked her to care for the child C. (called C.J.) and when he arrived he had no winter coat or boots and only a few clothes were provided.

[8] A file was opened by the Minister's office on November 1, 2012 for the following reasons:

1. The mother asked the paternal grandmother to care for four year old C. for two months. When he was turned over he had few clothes and complained about sore teeth and toothaches to the point he was crying.
2. The child had been complaining to his mother since summer about his toothaches. In the end, he had to have dental surgery and had two abscesses treated, two infected compacted teeth removed, four caps put on his teeth and replacement of temporary fillings that had come out because he had been eating hard candies. He also a root canal during this operation.
3. There were reports that the Respondent mother was snorting drugs and drinking alcohol (these problems were admitted by her at the review hearing).

4. On November 20, 2012, the Minister received a referral that the two children A. and B. (who was crying) were downstairs by themselves while the mother was upstairs sleeping. The youngest child had a soiled diaper.
5. Evidence is that the Respondent mother would leave the children with different persons and indicate she was just going for groceries but she would not return until late the next day.
6. There is evidence the Respondent mother was involved with the RCMP relating to alcohol consumption and in January, 2012 charged with shoplifting and obstructing police.
7. On November 21, 2012 an agent of the Minister spoke to A. who indicated she had frequently missed the school bus and that she had not received breakfast or a meal in the last couple of days, only small snacks.
8. The Respondent's home was described as dirty and unsanitary with limited food in the cupboard.
9. One babysitter of the child indicated the Respondent mother had not been adequately supervising her children. She was inattentive to them and drinking heavily. The school also noted poor attendance and the Respondent mother failed to keep appointments with school authorities.

**The Law:**

[9] The *Children and Family Services Act* provides for review of temporary care and custody orders:

**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.

(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 interests; 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 future 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.

[10] A number of items set out in the *Children and Family Services Act*, more particularly in the preamble are relevant:

AND WHEREAS parents or guardians have responsibility for the care and supervision of their children and children should only be removed from that supervision, either partly or entirely, when all other measures are inappropriate;

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;

### **Conclusion / Decision**

[11] Neither the five day or thirty day stage orders required the Respondent mother to attend for any treatments or assessment or services. The Protection Order also did not provide anything of this nature.

[12] At the original disposition hearing, the Minister requested a Temporary Care and Custody Order to the Minister of the children A. and B.. C. was to be placed in the temporary care of the paternal grandmother, R.M., with access to the Respondents on terms and conditions acceptable to the Minister. It was requested in the Minister's Plan of Care that a parental capacity assessment be

made on the Respondent father, C.M., (he subsequently obtained custody of the child C. by consent). A parental capacity assessment was also requested in the Minister's plan with respect to the mother O.K., as well as random urinalysis and/or hair follicle testing for both parents.

[13] The original disposition order dated April 16, 2013 did not provide for the terms and conditions referred to and requested in the Minister's Plan of Care, however, this was provided for in a placement variation hearing order dated March 12, 2013. A parental capacity assessment and random urinalysis was ordered with respect to the Respondent father C.M.

[14] It appears from a review of the orders on file a parental capacity assessment or urinalysis and/or hair follicle testing on the Respondent mother O.K. was never ordered. No parental capacity assessment was placed in evidence on this review application with respect to the Respondent mother.

[15] It should be noted the Respondent father C.M. has consented to permanent care and custody and he has custody of the child C.. By order dated March 12, 2013 the court waived future notice and disclosure to the Respondent father V.J. as he has not participated in this proceeding with respect to his child A..



[16] The evidence on this review consisted of Margaret Morgan, the Minister's agent and the Respondent mother O.K.

[17] In her affidavit, the agent refers to the Agency Plan and recommended services to the Respondent mother. She says the Respondent mother was unwilling or unable to commit to these services. There was an admission by the Respondent mother that she was involved in using alcohol and illegal narcotics, including intravenous injections over the past ten months. She says now she is on the road to recovery, now taking Methadone for drug recovery. She takes this every Tuesday at Pharmasave. She also agrees that on occasions, she showed up in court in pretty bad shape. Two of her counsel have withdrawn because of her failure to communicate to take or give instructions. The Court gave her from September 10, 2013 to the review date and she has not even consulted with counsel.

[18] The services that were offered were transportation for access visits and appointments. Family support services were offered but it appears she was not available for this service.

[19] It was recommended she self-referral for assessment and treatment of substance abuse (no report has been received). Hair follicle testing and urine

testing has not started because the Respondent mother admitted to continuing substance abuse.

[20] The Respondent mother had one meeting with the Parenting Journey Program which works with families to promote healthy growth and development of children. Other appointments were cancelled by the Respondent mother.

[21] She has not been pro-active and it is because of her lack of initiative the disposition of this matter has been delayed on a number of occasions. Her demeanor and understanding of what is required of a parent is lacking and she has not provided any proof of progress with parenting and substance abuse.

[22] The Minister's counsel has referred to *P.H. v. Nova Scotia Community Services*, 2013 NSCA 83 which is particularly relevant to the case before the Court:

Section 42(4) of the Act says that before granting an order for permanent care and custody, the trial judge must consider whether the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limit in s. 45(1) of the Act, so the child may be returned to the parent.

Section 46(6) of the Act expressly directs a trial judge, at every review hearing, to not keep granting temporary care if the circumstances are unlikely to change within a reasonably foreseeable time not exceeding the maximum allowable under the Act.

Courts must respect the child's – not the parent's – sense of time and the impact on the child of time passing, not the impact on the parents. J.F. makes this point clear:

'It is in a child's interests that the uncertainty that accompanies a child welfare proceeding be prolonged no longer than necessary. The statutory time frames provide the outside limits. Indeed, the Act contemplates that an order for permanent care may be necessary even before the maximum times have expired (see, for example s. 46(6)). ...

The statute does not oblige a judge to defer a decision to order permanent care until the maximum time limits have expired:

The Act does not require a court to defer a decision to order permanent care until the maximum time limits have expired. The direction of s. 46(6) of the statute is to the opposite effect. (L.L.P v. Nova Scotia (Minister of Community Services), 2003 NSCA 1.

[23] The Respondent mother was well aware of the things she had to do to remedy the situation that she had put herself in concerning her ability to parent her children. It appears the main reason for delay has been her relapse into substance abuse for which she now says she is in treatment. She has been inattentive to putting herself in a position to have the children returned to her. Two counsel have withdrawn from her case because of her failure to be available to them to give and take instructions. Her demeanor in court can be described as one of not being able to understand the nature of her problems with substance abuse and what it takes to be a parent in tune to the needs of her child. They deserve more attention and parenting than she is capable of giving.

[24] It is in the children's best interests that an order for permanent care and custody of the children, A., born April [...], 2007 and B., born October [...], 2011 be made.

[25] Order accordingly.

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JOHN D. COMEAU, JFC