

2001

File No. F. DM C98-10

SFH C. 9620

IN THE SUPREME COURT OF NOVA SCOTIA

FAMILY DIVISION

[Cite as: C. v. Minister of Community Services, 2001 NSSF5]

BETWEEN:

A.B.C. -

APPLICANT

-AND-

MINISTER OF COMMUNITY SERVICES -

RESPONDENT

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on April 2, 2008.

DECISION

HEARD:

BY THE HONOURABLE JUSTICE MOIRA C. LEGERE ON OCTOBER 23, 2000 and
DECEMBER 20, 2000

DECISION: JANUARY 23, 2001

COUNSEL: COLIN CAMPBELL

- APPLICANT

JAMES LEIPER

- RESPONDENT

LEGERE, J.

This application dated June 30th, 2000, is commenced pursuant to Section 48(3) of the **Children and Family Services Act**. A.B.C. seeks to review the permanent care order made September 8, 1999, which order placed T.J.C. born [in 1990] in the permanent care and custody of the Minister of Community Services. That order was silent as to access. Nine months elapsed after the permanent care order. A.B.C. seeks to re-establish her access with T.J.C. with the ultimate aim to seek a return of T.J.C. to her custody.

Subsection 48 of the **Act** states as follows:

On the hearing of an application to terminate an order for permanent care and custody the court may

- (a) dismiss the application;
- (b) adjourn the hearing of the application for a period not to exceed ninety days and refer the child, parent or guardian or other person seeking care and custody of the child for psychiatric, medical

- or other examination or assessment;
- (c) adjourn the hearing of the application for a period not to exceed six months and place the child in the care and custody of a parent or guardian subject to the supervision of the agency;
- (d) adjourn the hearing of the application for a period not to exceed six months and place the child in 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; or
- (e) terminate the order for permanent care and custody and order the return of the child to the care and custody of a parent or guardian or other person.

Subsection 10 states:

Before making an order pursuant to subsection 8 the court shall consider

- (a) whether the circumstances have changed since the making of the order for permanent care and custody and
- (b) the child's best interests.

Evidence was heard from Mary Haylock, A.B.C., Dr. Allison, Martin Whitzman and Ann Bond on October 23, 2000. The trial continued on

December 20, 2000 at which time Dr. John Curtis and Ms. Bond completed the testimony.

The paramount concern in proceedings of this nature is the best interests of the child. As confirmed in the **Children and Family Services Act** in Nova Scotia (*Minister of Community Services v. S.M.S. et al (1992), 112 N.S.R. (2d) 258*), the Applicant bears the burden of proof.

HISTORY

T.J.C. has been subject to intervention from the Department of Community Services since February 5, 1998 when a protection application was advanced. The child was removed from her mother's custody in April, 1998 and has remained in foster care since that time.

The decision of September 8, 1999 sets out in considerable detail the findings of the court in support of the permanent care order. It notes at Page 3 the focus of the Department's concerns. They include the following:

- the transiency of the mother and the associated lifestyle of the child;
- the parents' failure to ensure she remained in school on a regular basis;
- the pattern of domestic violence and its effect on the child; and
- the inadequate parenting style of the mother and step-father.

Throughout the course of the original proceedings, A.B.C. maintained an abusive relationship with M.C.. Despite many assurances throughout the period of time from February 5, 1998 to the permanent care order on September 8, 1999, A.B.C. remained with M.C. on an intermittent basis, continuing to expose herself to the lifestyle inherent in the mutually abusive relationship.

In the original proceedings, there was a consistent lack of compliance and honesty. This resulted in the court's finding that A.B.C. lacked

credibility when she assured the court she was prepared to abide by court direction and agency services.

The decision noted a pattern of abusive relationships including the latest relationship with M.C.. The decision noted the history of eviction from residences and transition homes. While in Nova Scotia, A.B.C. was evicted from Bryony House and removed from Adsum House as a result of difficulties she encountered in relationships with others. In addition during the course of the proceedings, it was clear that despite assurances to the court, A.B.C. did not abide by court order directions.

The efforts made during the course of the proceedings to increase access with the mother resulted in failure due to non compliance with the terms of access. This resulted in a restriction of access and ultimately a termination of A.B.C.'s access to her daughter, T.J.C..

T.J.C. was the focus of child protection authorities in other provinces including Ontario and New Brunswick. At three months old, T.J.C. came into contact with the Ontario Department of Community Services because

of her transience and exposure to domestic abuse. She was stabilized in Nova Scotia only because of a court order restricting her mobility.

This child has resided in many transition homes and homes for battered women across Canada. Her education was jeopardized as a result of her failure to attend school on a regular basis.

A.B.C. has had historical difficulties with landlords and evictions across Canada. She has had historic difficulties with abusive relationships with men other than M.C.. The Assessment Report dated May 29, 1998 contains the following comment:

T.J.C. has not experienced any sustained stability in terms of her living arrangements whether living with both parents or just with her mother.

Throughout the course of the proceedings, a therapeutic plan was devised and implemented to address the parental difficulties. It required a stable environment, therapy for the mother and the child, the removal of

M.C. from the child's life until his own difficulties could be addressed and evidence of a sincere effort to improve her situation.

The child started therapy with Martin Whitzman on April 14, 1998. Mr. Whitzman was concerned about her underlying pathology. He was further concerned about the effect of the difficulties the access with her mother created for T.J.C.. At one point, he proposed access outside the offices of Community Services. When the mother did not comply with the rules, this access was reduced and ultimately terminated.

It is an understatement to say as was said by Mr. Whitzman, that T.J.C. is a troubled child who requires stability and long-term counselling. Clearly, part of the cause of her difficulties emanates from the transient and unstable lifestyle to which she was exposed in addition to the relationship of domestic violence and the difficulties encountered in relationships.

T.J.C. has been a difficult child to place and continue to be placed because of her high level needs. At the end of the proceeding, I concluded the following at Page 59 of my decision:

The likelihood of change within the time frame required by legislation is minimal to non-existent.

Further, I noted:

Unfortunately this child has been subject to this instability for most of her life. She is attached to her mother, misses her and wants to go home. She displays disturbed behaviour in foster care. This is not the first time this child has exhibited disturbing behaviour while in care. She now requires long term therapeutic intervention and stability. ... Going home virtually guarantees she will continue to be at risk emotionally, physically and educationally.

There is no viable plan of care other than that of placing her in the permanent care of the Minister of Community Services. In the care of the Minister she has a stronger possibility for stability and counselling services. Her education must be a priority. If adoption is a possibility at her age, she must have every opportunity for permanency.

Ordering access to the Respondents at this stage may provide an obstacle to long term placement, particularly in light of the evidence that both parents have interfered with previous foster

placements and jeopardized the security of the placement.

Accordingly, I place the child in the permanent care and custody of the Minister of Community Services. There shall be no order as to access.

Change in circumstances

A.B.C. indicates that she has changed sufficiently since the September 8th, 1999 decision, to cause this court to conclude that access between her and her daughter is appropriate and in the best interests of her child.

A.B.C. provided an affidavit and viva voce testimony to the court. She testified that she was prepared to begin to address her difficulties in earnest with Ms. Haylock, Dr. Allison and any other professional deemed necessary.

Dr. Allison is a psychiatrist . A.B.C. became a patient of Dr. Allison in August,1999 . Mary Haylock was qualified as an expert in adult counselling

with an emphasis on counselling women who experience domestic abuse.

A.B.C. has been a client of Ms. Haylock since February 1, 2000.

In addition, A.B.C. attended the Northend Parent Resource Centre for eight months and received a certificate of participation in the program, Productive Parent. The Executive Director of Northend Parent Resource Centre confirms that A.B.C. has been involved for eight months in the Parent Resource Centre. She participated in a six-week parenting program, is a member of the women's support group which meets every Thursday to discuss issues of parenting, nutrition and healthy child development and is part of a cooking class. She acknowledged that A.B.C. has played an active role in programs and group activities and she noticed an improvement in her life skills and communication.

A.B.C. confirmed that her last contact with M.C. was early in the year 2000. To support her assertion that she is no longer associated with M.C., she provided a copy of a letter expressing her intent to pursue divorce proceedings in the Province of Ontario. Her letter of December 14,

2000 indicates that she intends to send this to the appropriate court in Ontario. Indeed, M.C. has not been an issue in this proceeding.

A.B.C. has a history of transience related to her desire to be reunited with her children from a previous relationship. These children were placed in the care of the children's father. They have remained unavailable to her, and she has attempted to locate them to obtain access to them. In February, 2000 she advised the Department that she is still being denied access to her child in Ontario and is talking to lawyers about seeking interim custody. To pursue this contact, A.B.C. had relocated herself and T.J.C. on numerous occasions. Her transience was terminated when the child was apprehended by the Nova Scotia Department of Community Services, and this child's mobility was restricted.

A.B.C. advised that she has maintained residential stability. Her current tenancy ought to be considered proof of her ability to provide some permanency to her daughter. The file from the Residential Tenancy's Board illustrates a continuing pattern of behavior that has resulted in A.B.C.'s eviction from her apartment.

Up until June 1, 2000 the Department of Community Services was paying the rent for A.B.C.'s apartment directly to the Housing Authority. The Housing Authority was advised by letter dated May 3, 2000 that from June 1, 2000 forward that the monies would be directed to A.B.C. and she would be responsible for paying her rent to the housing authority.

As a result of incidents that occurred in the house, A.B.C. was given a Notice to Quit as of April 1, 2000. As of August, 2000 she had failed to pay rent and the Housing Authority was seeking to apply to the Director of the Residential Tenancy Board for relief. The complaints listed pre-date April, 2000 when notice was provided to A.B.C. demanding she leave her apartment. The letter advises her that this was due to the continuing malevolent and malicious attitude displayed towards other tenants in the building. The letter states:

As a housing association attempting to provide suitable and adequate accommodations to aboriginal people in the Halifax area, we have become increasingly concerned by your inappropriate conduct to our tenants. In

the past we have given you the benefit of the doubt, regarding complaints about your behaviour and opted not to issue you a Notice to Quit.

We have attempted to mediate previous disputes, however you cancelled appointments made with our Tenant counsellor to discuss the issues. As a result, two of our tenants decided to vacate the premises because they could no longer tolerate your behaviour and attitude towards them.

Since then the problems surrounding your tenancy have not been resolved.

A.B.C.'s explanation to the court was that she was older than many of the tenants and could not tolerate the noise level of the partying that resulted from the younger tenants' life style activities.

I am not satisfied on the totality of the evidence that A.B.C.'s behavior toward others has improved significantly.

Dr. Allison testified on behalf of A.B.C.. A.B.C. had been referred to him on August 26, 1999 by Dr. Banks. He had seen her on eight occasions

between August,1999 and April 21, 2000. In Dr. Allison's report, he indicates that while he had first impressions of significant anti-social personality characteristics with respect to A.B.C. he has revised this impression and believes that she has "fairly significant character neurosis which could also be described as indicative of an underlying dysfunction of personality with strong borderline characteristics". He has no knowledge of the child or the child protection issues. From his perspective, he has suggested that it would be okay to start up visits with T.J.C., from A.B.C.'s perspective, because he has suggested there may be changes in A.B.C.'s behaviour. In his words, A.B.C. has begun to experience some changes at a fairly fundamental level.

Dr. Allison admits that he has no specific expertise in the assessment of parental abilities of people. He concludes, however, as follows:

I do believe that A.B.C. has begun to show some changes at a fairly fundamental level in her psychological make-up, and therefore in her psychiatric presentation. As noted in my earlier comments there appears to be some development of insight, some shift in a positive manner in the types of ego-defences that she uses, and some

appreciation as a need to be more selective in her relationships with people. I believe that she will continue to need and to benefit from on-going psychiatric care, with a bias towards cognitive behavioural techniques, together with some psycho-dynamic techniques. The overall goal of this will be to eventually allow her to access suppressed feelings in a controlled and safe manner, thereby hopefully start to resolve some of her past.

A.B.C. testified she intended to undergo long-term therapy. She asked Ms. Haylock, to testify about her ongoing therapy. Her report is dated April 27, 2000. Ms. Haylock informed the court that therapy with A.B.C. did not start until February 2000. Between February and September, 2000 there were twenty-six scheduled sessions. A.B.C. attended eighteen and cancelled or failed to show for eight. Ms. Haylock advised that when A.B.C. attended, she was usually prompt.

Ms. Haylock described A.B.C. as an individual who came from very difficulty life circumstances. The presence of anger and frustration in someone who has experienced life circumstances such as A.B.C. is understandable.

Ms. Haylock confined her testimony to her interaction with A.B.C., acknowledging that she was not in a position to give an opinion with respect to the child's needs. She believed A.B.C. has realized the enormous task of therapy she must process. She confirmed that in order for a relationship to be developed between A.B.C. and T.J.C., A.B.C. would have to be in a position of being available to address the child's needs. To do that, A.B.C. would have to have addressed some of her own needs.

She confirmed that A.B.C. presented with historical information of low impulse control. They concentrated on anger management issues, on boundary issues and on developing skills regarding listening and following rules.

Ms. Haylock was prepared to indicate that she thought there was a change of heart.

With respect to M.C. to whom A.B.C. had been married for six years, her notes of February 7, 2000 indicate that A.B.C. won't go back, "unless he can straighten his life out". This does not appear to be as definitive an intention to break from the relationship as A.B.C. testifies she has made.

Ms. Haylock operated under a restriction. A.B.C. would not authorize her to communicate directly with Ms. Bond of the Department of Community Services. Ms. Haylock admitted that information from Ms. Bond would have been helpful in the therapeutic setting. Ms. Haylock was not authorized by A.B.C. to speak to Mr. Whitzman either.

The Best Interests of T.J.C.

A.B.C. described her own extensive history with child protection in her young life and her disappointment was she was inadequately protected in foster care. Her personal experience in foster care feeds her concern about T.J.C.'s care in the permanent care of the Minister. She learned through the course of the proceedings that her child was on Prozac as a result of a

recommendation from Dr. John Curtis. She had great difficulty accepting that her child needed medication of this nature.

Mr. Whitzman has been the main therapist for T.J.C. throughout. He reviewed briefly his involvement with T.J.C. and the serious issues that had to be addressed with T.J.C. to stabilize her foster care placement. He outlined meetings that took place with himself, Ann Bond, the foster parents and Dr. Curtis. I was satisfied that the professionals were attempting to deal with the difficult issues facing the plan to address T.J.C.'s emotional needs. I had insufficient information to make any conclusion about the timeliness of intervention.

Mr. Whitzman indicated that he did not recommend adoption at the date of the permanent care hearing because he felt that the child could not make the necessary adjustments at that time. He did not think T.J.C. could attach to anyone else. Introducing T.J.C. to a permanent adoptive situation at the time would create a stress in the adoptive family which would have precipitated a breakdown. He believes now that there has been sufficient changes to begin to pursue an adoptive placement. He indicates that

adoption is his ultimate goal but that there are significant problems and that progress has been particularly slow with T.J.C.. He confirms it is his belief that medications currently are necessary to facilitate the therapy. He sees this therapy as a long-term process.

Mr. Whitzman indicated that while adoption was always considered, there are some specific needs that ought to be immediately addressed. The original plan was for a year of therapy to address these needs in order to assist T.J.C. to become developmentally more age appropriate and to get her at a healthy level to begin talking about adoption.

Mr. Whitzman acknowledges that after May 29, 2000 he became aware that A.B.C. was making an application for access. Mr. Whitzman reaffirms his clearly stated position that he is opposed to access. He confirmed that the introduction of medication was to assist T.J.C. in experiencing the extreme emotions that result from the triggering of past memories.

While there are difficulties with T.J.C.'s emotional development, there are positive aspects to her current situation. She has been involved in swimming. Her behaviour has been described as better than previous. T.J.C.'s behaviour notably deteriorated from July forward. The behaviour included screaming, not listening, ripping up garbage and acting out. It was at this point that they contacted Mr. Whitzman and a plan was put in action to meet with Dr. Curtis.

The administration of Prozac came to T.J.C. as a result of continued difficulties in foster care. Her placement in foster care has been troubled, and therapy seems to have reached an impasse with T.J.C.'s behaviour becoming more difficult. The clinical explanation given by Dr. Curtis is that there has been sufficient stability in T.J.C.'s life over the past two years that she is now beginning to deal with past emotional traumatic experience. This has created behavioural problems which may get worse before they get better. As the issues surface, it was determined appropriate to assist her in maintaining her own emotional stability by administering Prozac for a period of time while these issues are dealt with. It is not anticipated she will be on Prozac long term.

This explanation from both Mr. Whitzman and Dr. John Curtis satisfied me that the professionals involved in her care have been focused on these difficulties and have made difficult decisions with respect to her treatment after considerable thought. It is not my task nor am I in a position to conclude whether the strategy adopted to deal with T.J.C.'s difficulties is the correct approach. At this stage, I would have to rely on the doctor and Mr. Whitzman in conjunction with the Minister's agent to make the best decision possible after careful research and discussion. They remain responsible for the decisions they make.

The mother expressed concern about the care T.J.C. received in foster care.

Mr. Whitzman noted that the foster parent had become frustrated and was being worn down by T.J.C.'s particular needs. He acknowledges that T.J.C. has been giving the foster mother a very difficult time and makes it clear, as does T.J.C., that the foster mother happens to be the target of these emotions but T.J.C. is clear about her affection for the foster mother.

Mr. Whitzman describes this as a situation where T.J.C. feels safe enough to explode with the foster mother. He continues to work with T.J.C. to focus on assisting T.J.C. in figuring out what these emotional responses are, why she is experiencing them and learning how to adapt for the future.

He confirms that he believes the attachment of the child to the mother is clear but it is not a positive attachment. Dr. Curtis confirms his belief that T.J.C.'s attachment to her mother is a disorganized attachment.

Mr. Whitzman confirmed he recommended access terminate previously when it was clear that T.J.C. was not benefitting from the visits. He describes T.J.C. as a child who craves nurturing. He describes his knowledge of T.J.C. and A.B.C. and acknowledges that he did not see any nurturing in the relationship between A.B.C. and T.J.C.. He acknowledged his concerns about the current foster placement's ability to continue with a child of such high needs given what they have lived through with T.J.C.. He called upon Dr. Curtis for assistance to address what symptoms he saw of dissociative disorder.

A letter from Dr. John Curtis dated August 17, 1999 to Dr. John Nicholson, Woodlawn Medical Clinic, has been included in the evidence. He is a specialist in the area of dissociative disorders and first became involved with T.J.C. on August 17, 1999. He conducted his interview and noted that she did not meet the full criteria of dissociative disorder. He cautioned the court in his evidence that administering tests to children requires some flexibility and interpretation of the interview results. He acknowledges that he did not make himself familiar with the extensive past history of this child and did not determine it relevant for the particular purpose for which he was consulted.

He found that T.J.C. did appear to have evidence of dissociation. He noted that her behaviour in daycare was excellent and that she does well in school. The problems arrive at home (foster home). He noted that a problem would occur when someone requested she do something and she would flare up, curse and swear and become very angry. He described the background information given to him to confirm that T.J.C. could suddenly switch out of this angry state and become a very loving and kind child; what was described as her everyday self as opposed to this very angry young

girl. He indicated he was very hesitant to label the difficulty as a dissociative identity disorder. He preferred to think of the problem as a problem of developmental delay in that T.J.C. was doing at eight years old what she should have been doing at age three to four. He confirmed the need for a home of safety and one of understanding. He indicated that she needs a confident parental figure.

Together through Ms. Bond, the foster parents, Mr. Whitzman and Dr. Curtis, they developed a strategy to help T.J.C. retrace the developmental steps that were left out.

He was consulted a second time and he proposed that he conduct an educational session with the foster parents to assist them in understanding how this can develop and how to treat a child by correcting the developmental deficits that occurred. He emphasized the importance of a healthy attachment and attachment in general when dealing with individuals who suffer from symptoms of a dissociative disorder. In assessing where T.J.C. fits, he indicates that he believes she suffers from a disorganized attachment. He acknowledges that the information he drew on to lead him

to this conclusion is information that was given to him by T.J.C.'s current caretakers through the agent for the Department of Community Services. He referred to the deficits as early neglect, how it can be displayed in anger and how one deals with that in on-going living situations.

He spent one-half hour with the foster mother and T.J.C. on August 29, 2000. He explained the use of Prozac. He explained the need to dampen the anxiety felt by T.J.C. in order to assist her in developing and processing the emotional information and material. It was clear in referencing the source of the problem that the child's early history was a significant contributing factor..

Ms. Bond is a senior social worker with Department of Community Services. She has been T.J.C.'s child care worker for a considerable period of time. She indicates that there is an intent to present T.J.C. for adoption but acknowledges that T.J.C. is a child of significant and special needs and that she required therapeutic involvement to put her in a state of readiness for adoption. She continues to believe that access would restrict their ability to find a long-term placement as they continue to work towards

getting T.J.C. ready to be placed for adoption. She acknowledges that the current foster home, since June, 1999 is one where T.J.C. is parented by an older couple. She acknowledges a desire to try and stabilize the foster placement by providing respite care rather than move T.J.C..

Ms. Bond acknowledged that she was not allowed to speak to Ms. Haylock about the application and A.B.C.'s readiness to seek access to her daughter. Ms. Bond is not pessimistic about the possibility of adoption for T.J.C..

In reviewing the authorities on this matter including those cited in the Minister's brief I make the following conclusions:

In the permanent care and custody order, it was clear that this child was a troubled child with special needs and would require fairly significant therapeutic involvement to sustain and improve her emotional development. It was clear that this was not a short-term fix. While adoption has always been the plan, and continues to be, the identified emotional needs of this child require immediate and sustained involvement. It makes

sense to encourage the emotional health of this child for the child's sake and to make viable and sustain any proposed adoption placement. It is reasonable, on the evidence, to conclude that the probability of a successful adoption can only be enhanced if the child's emotional and developmental health is improved.

Section 48(10) requires a change in circumstances and a finding that the proposed move is in the best interests of the child. The mother must show that her circumstances have changed sufficiently in order to be successful in this application. The access proposed must be in the best interests of the child. The mother would have to prove on the totality of the evidence on the balance of probabilities that access was in the best interests of the child *whether or not adoption was the plan*.

I am satisfied that adoption is certainly contemplated but that T.J.C.'s needs require stabilization and improvement in her emotional development. Achieving that can only enhance the possibility of adoption. If adoption is not a viable possibility for T.J.C. the issue of access with her mother still has to be determined to be in her best interests.

The Supreme Court of Canada in *New Brunswick (Minister of Health & Community Services v. L. (M.) 1998*), 165 DLR (4th) 58, confirmed that access is the exception and not the rule. Setting aside the viability of adoption I do not have sufficient evidence to cause me to conclude that reinstating access between A.B.C. and T.J.C. is in her best interests.

A.B.C. has made some progress and appears to have convinced at least Dr. Allison that she has begun the process of fundamental change. Ms. Haylock believes that there has been a change of heart. M.C. does not appear to be on the immediate scene. There are critical and fundamental changes in behavior that need to flow from these changes in attitude. There is much work to be done that requires a more prolonged period of therapy and sustained behavioral change.

There is minimal evidence to cause me to conclude that there is sufficient residential stability and behavioural changes in A.B.C.'s relationship with others to support the re-introduction of access. There needs to be a more sustained therapeutic involvement and evidence that

the issues that have haunted A.B.C. for a lifetime have been addressed sufficiently to be able to focus on the child's needs.

There is no evidence in which I can conclude that the mother's changes, coupled with T.J.C.'s current emotional development and stability, would be enhanced by contact with her mother at this stage. Indeed there is evidence to the contrary from Mr. Whitzman, Ms. Bond and Dr. Curtis to suggest that re-introduction of the mother may add a complicating, unpredictable and emotional strain as T.J.C.'s caretakers move her through this most difficult period of her life.

To re-instate access with T.J.C. at this point, given her particular situation, I would have to be convinced in accordance with the burden of proof that A.B.C. has made very fundamental and sufficient changes in her behaviour such that her contact with T.J.C. and her behaviour, at least, would be predictable and consistent. In addition, the court would need to be in the position to be able to conclude in accordance with the burden that T.J.C.'s emotional development and stability would be enhanced by the consistent and predictable contact between T.J.C. and her mother and that

such access would not have a detrimental effect on T.J.C.'s on-going emotional development.

Failing adoption, at some point in this child's life it may be appropriate to consider re-introduction of the mother to her. The evidence I have causes me to conclude that it is not appropriate at this time to re-introduce the mother to this child and to risk further destabilizing the foster care placement.

The Application is dismissed.

Moira C. Legere, J.