

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
[Cite as: A.B.C. v. Minister of Community Services, 2002 NSSF23]

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 25, 2008.

D E C I S I O N

Heard by the Honourable Justice Moira C. Legere on the 11th & 25th day of February, 2002 and the 11th day of April, 2002 at Halifax, Nova Scotia.

DECISION: April 26, 2002

COUNSEL: Colin Campbell - for the Applicant

James Leiper - for the Respondent

NOTICE

Publishers of this case please take note that s. 94(1) of the **Children and Family Services Act** applies and may require editing of this judgment or its heading before publication. Section 94(1) provides:

94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

LEGERE, J.

A.B.C. made application to vary the Permanent Care Order dated September 8, 1999. This Decision placed her child, T.J.A.E., born [in 1990] (aka T.J.A.C.) in the permanent care and custody of the Minister of Community Services.

Originally, the child remained in the care of the mother and step-father, M.C.. On April 16, 1998 the child was removed from the mother's care and placed in the care of the Minister of Community Services. She has remained in foster care since that time. In that Decision I listed the focus of concerns identified by the Department throughout.

They include:

- transience 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;
- the inadequate parenting style of the mother and step-father.

The child witnessed domestic violence on an on-going basis between M.C. and A.B.C.. A.B.C. admitted in those proceedings that she canceled an access visit with her child because the bruising on her would be visible to child protection workers.

Commencing April 3, 1998 the child was referred to Martin Whitzman for counselling and therapy.

During the course of the proceedings M.C. and A.B.C. were unable to address the issues of domestic violence between them. From the beginning A.B.C. demonstrated her inability to abide by court order, both while the child was with her and when the child was removed from her care and placed in a position where the mother had supervised access to her.

Transience

My first Decision documents the effect of transience on the child. As far back as 1992 the mother acknowledged to the Child Welfare worker that:

The repeated changes in residences and partnerships over the past several years have been a source of confusion and instability for T.J.A.E..

And, further documenting the child's life in foster care the Child Welfare reports from Toronto indicate:

...during her placement at T.J.A.E. was openly competitive with the other children in the home, becoming angry and frustrated when she perceived they were getting either more or different attention than she. As a result, she vigorously tested the foster mother's limits and expectations and repeatedly tried to manipulate her mother against the foster mother, as well as one child against the other in the foster home.

I spent considerable time in that Decision dealing with the effects of transience on the child. I deal with it in this decision because the mother has alleged, correctly, that since the Decision placing the child in care, the child has had four permanent placements and approximately 31 respite placements. The respite placements would largely be in places known to the child - the respite placements ultimately at some point in time becoming the permanent placements for a period of time. The Decision and report document the number of moves and the transience of the mother and child, not only to different residences but to various transition homes and community shelters throughout the Country.

One of the most successful placements was disturbed during the course of this proceeding when the mother obtained the address of the placement and as a result of threats made against the placement, the child had to be moved.

Although A.B.C. has been able to reduce her own transience considerably, although not totally, the effect of the transience throughout this child's young life has had a significant and critical impact on her ability to settle in any placement.

Counselling

The original decision also documented the inability of the mother to engage and sustain counselling to deal with fundamental issues. This included a reference to Linda Ceresne and Ms. Beaton in which failure to commit was evident.

A.B.C. indicated at the time to me that the Department of Community Services failed in their legislative duty to provide appropriate services and support consistent with her cultural identity. That argument was put forward in an effort to indicate that an appropriate counsellor through the Native community was not available to her. This argument was not sustained on the evidence.

In the end I concluded the following:

T.J.A.E. has had a troubled, unstable, transient history since birth. The history of transience and domestic violence is documented in child protection records from other locations including Ontario, Alberta, New

Brunswick and Nova Scotia. The lack of commitment to her education is documented in Ontario, New Brunswick and Nova Scotia.

Neither M.C. nor A.B.C. have been able to successfully engage in a therapeutic relationship that will effectively address the fundamental problems associated with domestic violence, transience, their life skills and parenting.

In the original Decision I did not order access so as not to interfere with the likelihood that this child would be adopted.

First Review

The first application under Section 48(3) to review the permanent care order was made on June 30, 2000. This was nine months after the permanent care order. At that time I heard evidence from Mary Haylock, A.B.C., Dr. Allison, Martin Whitzman and Ann Bond. I heard from Dr. Curtis as well.

For the purposes of this current decision I will incorporate, where necessary, the findings of fact and will not repeat them. In that decision, I incorporated findings of fact from the original decision which confirmed that part of the reason this troubled child currently requires stability and long term counseling emanates from the transient and unstable life style to which she was exposed in addition to the relationship of domestic violence and difficulties encountered in relationships. It was known to me at the time

that T.J.A.E. was a difficult child to place and to maintain a placement because of her high level needs.

At the time A.B.C. asked to reinstate access because her own circumstances had changed. She was prepared to begin to address her difficulties in earnest with Ms. Haylock, Dr. Allison and any other professional deemed necessary. She attended the Northend Parent Resource Center for eight months and received a certificate of participation in the program, Productive Parent. She was no longer in association with M.C..

While she advised the court at that time that she had been able to sustain residential stability, the file from the Residential Tenancies' Board illustrated a different pattern. She was given a Notice to Quit in April of 2000 due to her "continuing malevolent and malicious attitude displayed towards other tenants in the building".

I was not satisfied on the totality of the evidence that her behaviour had changed or improved significantly. I indicated in my Decision dismissing the mother's application to review the following:

To re-instate access with T.J.A.E. 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 behavior such that her contact with T.J.A.E. and her behavior, at least, would be predictable and consistent. In addition, the court would need to be in a position to be able to conclude in accordance with the burden that T.J.A.E.'s emotional development and stability would be enhanced by the consistent and predictable contact between T.J.A.E. and her mother and that such access would not have a detrimental effect on T.J.A.E.'s on-going emotional development.

A.B.C. introduces evidence from Mary Haylock and Dr. Niegel Allison to support her belief that she has made significant efforts and progress in addressing the problems outlined in the permanent care decision and the review.

A.B.C. testified she saw Dr. Niegel Allison for approximately 2 ½ years. Dr. Allison had seen A.B.C. on eight occasions between August 1999 - April 21, 2000. Previous to the October 2001 visit he had one prior visit on April 4, 2001. At that time she presented as very angry with everyone. His findings are contained in his report dated October 2001. He had and continues to have no knowledge of the child protection issues. He suggested in that report there may be changes in A.B.C.'s behaviour.

He confirmed in his last letter to the court that his diagnostic impressions, psychiatrically, have not changed since his October 12, 2000 report. The changes that he reflects in his most current letter are the result of discussions that took place in one

meeting with A.B.C. on October 4, 2001. He has no other outside sources of information. His report is based on self-reporting for A.B.C..

Although A.B.C. describes a relationship of several years with Dr. Allison, he indicates he has not actually seen her in therapy for several months. He has not seen her since early 2001.

A.B.C. indicates in her testimony before me that she has seen Mary Haylock for over 2 ½ years. She indicates that when she started seeing her weekly, it then went to every 2 weeks and then to once a month. She concluded the sessions prematurely because she felt there really was not much to talk about. For the 6 months preceding February 21, 2002 she indicates she saw Mary Haylock twice.

The court was told that therapy did not start until February 2000 and that between February and September of 2000 there were 26 scheduled sessions. A.B.C. attended 18 and cancelled or failed to show for 8. She indicated that in order for A.B.C. to be able to parent she would have to attend to her own needs first.

Ms. Haylock's report of November 22nd speaks to what progress she has observed from October 12, 2000 to her current involvement. Her contact has not been as intense during the subsequent period of time as it had been in the beginning where she had seen her on a bi-weekly basis until October 2001. She has not had contact with her since that time. Although there are 5 more sessions in her contract, A.B.C. has been busy or not coming in.

She confirms that she did see A.B.C. making a difference in understanding and developing conflict resolution strategies.

In her October 12th report she indicated she could not give an opinion as with regards to A.B.C.'s request for supervised access and her long term plan of care. Again, in November 2001, she makes no recommendation because she does not believe she is in any position to make any comment in that regard. She has no knowledge of the child. She confirms that A.B.C. will need on-going support.

Ms. Haylock indicates that in her discussion with A.B.C. about her new relationship she was concerned that there was some indicia of potential abuse in the relationship. Ms. Haylock also dealt with several incidentals of conflict between A.B.C.

and other people in the community that occurred on an on-going basis, including persons in her apartment building and with a person at the Parent Resource Center. Ms. Haylock last met with A.B.C. on October 29, 2001 and they have no further scheduled sessions.

A.B.C. has not seen Mary Haylock since October 2001. She has only seen Dr. Allison once since April of 2001. Her explanation of this is that she has a patient/doctor relationship available to her and it is irrelevant how many times she has seen him. The fact of importance to her is that the door is still open. She had not seen him for 5 months, at the point she had reinstated her visits. She saw him once subsequent to that, to get a letter from him for court. That would have been October 4, 2001.

She testified that she is tired of seeing both Mary Haylock and Dr. Allison because she is tired of talking about depressing things, "I'm tired of talking about my past and I want to move forward". She stopped participating in any therapy with these two individuals. A.B.C. has confirmed that she feels she is finished dealing with therapeutic issues and that her daughter needs to be home with her.

A.B.C. testified she has concluded the relationship with M.C. and obtained a divorce. While she is in a new relationship with Mr. B. as of October 2000, he did not testify. She calls this a possible future relationship, depending on how the case resolves itself.

She found employment at a pizza shop for 3 days. She was dismissed for showing up late.

The evidence disclosed ongoing difficulties with other individuals with whom she comes into contact.

During the last application she had a one-year lease at [name of street changed] in Halifax. In August 2001 she was at Adsum House.

At the time of the hearing A.B.C. felt she was 100% ready to take custody of T.J.A.E.. A.B.C. does not believe she is responsible for any of the current problems that her child is having in foster care.

The Child

Dr. Curtis gave evidence that he continued to be involved with T.J.A.E.. He deals with an aspect of T.J.A.E.'s personality he terms the confrontational aspect where she becomes extremely difficult to deal with and enters into a very angry state. She very much regrets what happens afterwards but these behaviours continue. He indicates he will be seeing T.J.A.E. every 2 weeks. He will probably see her for 2 or 3 months which will amount to 8, 10 or 12 sessions.

One of the compelling concerns of the mother throughout the course of these proceedings is the fact that her child has now been prescribed Prozac and continues to be administered Prozac on an on-going basis. I heard evidence at that time from Mr. Whitzman and Dr. Curtis respecting the need for Prozac. Dr. Curtis continues to monitor the medication. He is aware that there was an attempt to reduce it and that was unsuccessful.

Dr. Curtis confirmed at that time that the introduction of medication like Prozac was meant to assist T.J.A.E. in experiencing the extreme emotions that result from the triggering of past memories. He noted the difficulties and the progress. He noted that placement in foster care had been troubled and that therapy had reached an impasse when Prozac was considered. The reason that T.J.A.E.'s behavior became more

difficult, as explained by Dr. Curtis, was that there was sufficient stability in her life over the past 2 years that she was beginning to deal with past emotional traumatic experience. This created behavioral problems which may get worse before they get better. To assist her in maintaining her own emotional stability they administered Prozac. At the time they did not anticipate that she would be on Prozac for a long period of time.

Prozac has been used, according to Dr. Curtis, because “it helps people who are unable to feel their emotions due often to high anxiety. It settles their anxiety and allows them to start to get in touch with themselves emotionally”. This was why it was suggested for T.J.A.E.. It appeared to settle her down into therapy. It will allow her to communicate more appropriately and to be less anxious around triggering issues of childhood. The original plan was to use this for 9 months and when attempting to slow it down, her behavior became markedly changed and they carried on using the medication.

The decision to continue its use was made in consultation with Martin Whitzman, Dr. Curtis and the foster parent.

I have no evidence before me that would put me in a position to determine whether medicating T.J.A.E. was other than an appropriate decision in consultation with her medical authorities and her guardians.

At the time of the permanency hearing Mr. Whitzman did not think T.J.A.E. was in a position emotionally to move forward to adoption. By the end of the first application to review the permanent care hearing Mr. Whitzman believed T.J.A.E. had made sufficient progress to begin to look for an adoptive home. He indicated to the court very clearly that he was opposed at that time to any access between T.J.A.E. and her mother.

In the past he gave testimony about the attachment problems suffered in childhood, concluding that much of the difficulty T.J.A.E. experiences comes from early childhood. He confirmed that T.J.A.E. has been on medication since August 29, 2000.

Mr. Whitzman testified at this review hearing. He prepared a report dated August 23, 2001. When he testified in October 2000 problems were still occurring in school and in the foster home, however, T.J.A.E. was much easier to engage in therapy. He attributes this to the medication.

Between October 2000 and April 2001 he notes that problems in foster care continued. He spent some of his time attempting to facilitate placement with the foster parents and working on T.J.A.E.'s issues with Dr. Curtis and himself. He considered he was making steady improvement with T.J.A.E. in terms of her ability to express herself, to stay focused and to stay in a mature versus immature state. Her behaviour outside his office continued to deteriorate.

She moved her foster home in February 2000 to a previously known foster home. Her behaviour deteriorated. Mr. Whitzman appeared to make all the necessary connections with Dr. Curtis and the foster parent to reintroduce the medication and he noticed a marked improvement.

He indicates he was aware by January 2001 that the current placement T.J.A.E. was in was breaking down. When she moved in January/February 2001 she was placed in another foster home for approximately 5 - 6 months to and including roughly August 2001.

He describes T.J.A.E. as requiring a parent with a great amount of energy as she needs a great deal of time and attention. If there are other children in the household this takes away from the foster parents' ability to focus solely on T.J.A.E..

From August forward he has seen T.J.A.E. once every 3 weeks to once every month. He deals with behaviour in school, school issues, placement, feelings, adoption and contact with her mother.

He confirms that T.J.A.E. has acknowledged that she has thought about her mom. She believes her mom resides in the area and hopes one day to see her again. He indicates, "As quickly as this discussion starts, it usually stops by T.J.A.E. and she moves on to another area". He sees no particular significance in that.

Mr. Whitzman has seen T.J.A.E. longer than any child on his caseload in four years. Mr. Whitzman reflected on the past two years in which adoption has not occurred. He notes that there is a persistent candidate wanting to adopt and he does not believe that there will be many candidates. His evidence is as follows:

"Without some therapeutic involvement I think it's very unlikely that it (an adoption) would be successful. A lot does depend on the candidate because it has to be somebody who is prepared to work through this from beginning to end.

... The Agency would have to be prepared to provide the services of a family therapist, child therapist, whatever to work with T.J.A.E. in that adoptive home on a long term basis, not on a short term basis.”

Mr. Whitzman indicated he had not had a child like T.J.A.E. with a dissociative disorder, “... clearly a dissociative disorder”, where there has been permanent care and thereafter an attempt to look at access. He is concerned about T.J.A.E.’s special needs, the problems that have developed in the past with access and contact with mom and he believes it will exacerbate the situation rather than provide any benefits. He is concerned that it will have more harm than benefit.

Mr. Whitzman made it clear that it is his belief that the majority of T.J.A.E.’s problems have developed years ago:

“... the interactions and lack of interactions, lack of ability to meet the needs of the child help create this disorder.

... it is due to what went on in those early years and right up until the time she was placed with the Agency.”

In clarifying the source of T.J.A.E.’s difficulties Mr. Whitzman was clear that he believed that T.J.A.E.’s problems are a direct result of the inconsistent parenting and the lack of parenting that she received. He believes there are several points up until 5

or 6 years of age where a parent can intervene and change it. However, after that it becomes much more difficult and usually requires outside assistance.

When questioned about whether these behaviours escalated while the child was in permanent care, Mr. Whitzman clarified that they have continued, changed and while certain behaviours have escalated, certain positive developments have occurred. He confirms that he is concerned about the multiplicity of placements in foster care. He confirms that moving children from placement to placement can be unsettling and does not aid in developing an attachment. It is not a positive thing and needs to be prevented.

Attachment Issues

In the course of this proceeding A.B.C., through counsel, requested a Guardian Ad Litem be appointed to specifically intervene directly with her daughter, T.J.A.E.. The end result of this request was the direction of the court that the matter be brought before Dr. Humphreys and agreed upon by counsel as an appropriate assessor to give expert testimony on the issue of attachment. Her assessment report is dated April 1, 2002. She indicated that the major concern with respect to T.J.A.E.'s emotional and psychological functioning continues to be her intense behavioural response of anger in

situations which she feels unable to control or in which she experiences herself, in some ways, inadequate.

In her conclusion after meeting with A.B.C.:

A.B.C. shows no insight that her own behaviour and emotional issues have contributed to T.J.A.E.'s difficulties. She has absolved herself of any responsibility for T.J.A.E.'s emotional and behavioural difficulties. She uses denial and blaming as defences to protect her own image of herself as a good mother. If she shows no insight, and if she accepts no responsibility, she will never recognize how her behaviour is damaging to T.J.A.E., nor will she develop any understanding of T.J.A.E.'s needs. A.B.C.'s manner of interacting with T.J.A.E. will be the same as it has always been.

She noted that T.J.A.E. was:

“an extremely troubled child. She shows significant and persistent emotional and psychological difficulties. She shows difficulties in her relationships, both with adults and with peers. ... T.J.A.E. has never experienced a secure attachment relationship with her mother. Her critical early years were years of ambivalence, inconsistency and emotional unavailability. T.J.A.E. shows the characteristics of a child with an insecure attachment relationship, and possibly attachment disorganization. As well T.J.A.E. was traumatized over many years by living in a family with domestic violence. She was also traumatized by her mother's verbal assaults and angry criticism. This is a child who lives continually with fear, a lack of safety and a lack of trust that her needs will ever be met. She rigidly controls her world to protect herself, and must continually fight any threats to her control.

Children who have experienced both serious attachment disturbances and trauma have a difficult path ahead of them. ... They present extreme challenges to their caretakers and to their therapists.

It is my opinion that T.J.A.E. does not have a positive attachment with her mother. In fact, she exhibits on-going anxiety and distress when she recalls her mother. Her mother is not a source of safety or security or comfort.

Reintroducing access for T.J.A.E. with her mother is not recommended. It is my opinion that contact for T.J.A.E. with A.B.C. would re-traumatize T.J.A.E.. She has not yet resolved the trauma she previously experienced with her mother. ... Contact would just be a repetition of the past ... would be extremely damaging to T.J.A.E.. There is nothing to suggest that contact would be in any way beneficial to T.J.A.E.'s psychological or emotional health. In conclusion, contact for T.J.A.E. with her mother would have a negative impact on T.J.A.E. and would cause further psychological distress for her. I recommend against resumption of access.

Finally I heard from Ann Bond who confirmed the numbers of placements in which T.J.A.E. has resided and the difficulties that are encountered in finding adoptive placements for T.J.A.E..

With respect to this application for review, to introduce access with a view to transferring custody ultimately to the mother, the Applicant has not met the burden of proof. What changes that have occurred in A.B.C.'s life have not been significant enough to place her in a position now or in the foreseeable future to re-introduce her to the child.

Had I been convinced that the changes in the mother's life were material, the other aspect to this application is the benefit to T.J.A.E.. The overwhelming weight of evidence including the opinions of those most significantly involved in the therapeutic

care of T.J.A.E. suggests that re-introducing access or contact between the mother and child would in fact be harmful in and of itself. It would also interfere with permanency placement.

The Agency must get on with permanency placement to increase the likelihood of long term benefit and therapeutic intervention for T.J.A.E..

The Application of A.B.C. is dismissed.

Maira C. Legere, J.