

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

Citation: *Nova Scotia (Community Services) v. C.M.W.*, 2002 NSSC 407

BETWEEN:

MINISTER OF COMMUNITY SERVICES

APPLICANT

- and -

C.M.W. and P.S.M.

RESPONDENT

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on September 3, 2008.

D E C I S I O N

HEARD: Before the Honourable Associate Chief Justice Robert F. Ferguson, at Halifax, Nova Scotia on January 7, 2002

DECISION: January 7, 2002 (Orally)

WRITTEN RELEASE: January 11, 2002

COUNSEL: James Leiper, counsel for the Minister
Peter Crowther, counsel for the Respondent, C.M.W.

**P.S.M., the Respondent, representing himself
Charlene Moore, counsel for the Guardian-ad-Litem**

PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT S. 94(1) OF THE ***CHILDREN AND FAMILY SERVICES ACT***, S.N.S. 1990, CHAPTER 5 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."

FERGUSON, A.C.J. (Orally)

R.M., born [in 1988], and S.M., born [in 1989], are the children of C.M.W. and P.S.M.. There is currently an order of the court in place dated October 4, 2001, wherein the court concluded there were reasonable and probable grounds to believe that the children were in need of protective services, that there was substantial risk to the children's health and safety and they cannot be adequately protected by an order pursuant to Section 39(4) paragraphs (a), (b) or (c) of the *Children and Family Services Act* and it was ordered that the children would remain in the care of the Minister. Both parents were to have supervised access. The children were referred for an assessment and counseling. The Minister was given the authority to provide supportive and rehabilitative services to the children. The Respondent, C.M.W., was to refer herself to the appropriate agency for a substance abuse assessment and she was to abstain from the use of alcohol and non-prescription drugs and cooperate and participate in random drug testing. The matter was further adjourned.

The Minister of Community Services is seeking a finding now that the children are, and continue to be, in the need of protective services and, further, that they should remain primarily in a similar situation as that expressed in the existing order. They are seeking a finding pursuant to Section 22(2) paragraphs (b), (g) and (ja). The Minister suggests the evidence before the court provides for such a conclusion and, further, a

finding pursuant to Section 49(e) that a court should make an order that the children not only are in the need of protective services but should not return the care of the parents.

The Minister is aware of Section 39(7) which states:

“The court shall not make an order pursuant to clause (d) or (e) of subsection (4) unless the court is satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to the child’s health or safety and that the child cannot be protected adequately by an order pursuant to clause (a), (b) or (c).”

Subsection (6) of that same section indicates that “substantial risk” means a real chance of danger that is apparent on the evidence.

The evidence establishes that there was an event that occurred in mid-summer pertaining to the parents use of alcohol. The event itself created a situation where the children ended up driving the car and where there was a subsequent altercation between the parents. It establishes that the children were living with family members subsequent to this event and prior to any court intervention. By that I mean the children had removed themselves from their parents’ home. The evidence established that the parents entered into a temporary care agreement which they signed. The agreement included an acknowledgment by the parents that they were temporarily unable to care adequately for the children for the following reasons: alcohol usage and poor family dynamics. It acknowledged the goals they were seeking in conjunction with the

Minister, specifically, a restoration of family functioning and the provision of a safe and nurturing home environment. It also acknowledged an undertaking by the parents that they would seek and accept an assessment and treatment for alcohol abuse and they would cooperate with an agency plan to improve family functioning. The evidence also indicates that this portion of this undertaking by the parents was not completed. The evidence establishes that, subsequent to this agreement and while it was in its winding-down stage, the agent for the Minister met with the parents, stated things were not going well; that the agency was not able to secure information that would make them comfortable in coming to a conclusion the alcohol abuse was not continuing. Further arrangements were made to provide a situation where the parents would be able to provide some evidence along the lines requested by the agency. This meeting did, from the Minister's point of view, not result in any positive change. The Minister sought a second temporary care agreement. The parties, specifically the father, disagreed. The agency then, faced with the situation where the temporary care agreement would terminate and the children would be in a position of returning to live with their parents, concluded the children were in need of protective services and took them into care.

The Minister submits that the need for services has been, by the evidence, established as of the date they took the children into care. The Minister submits that the evidence indicates that need for services continues at this very date.

The children and their Guardian ad Litem agree with the stance taken by the Minister at this time. The Guardian acknowledges the children's wish to return to their parents but does not support such a step at this time.

The children's mother, C.M.W., the Respondent, indicates that she is not in disagreement with the submissions of the Minister, i.e. that the children be found, at this time, to be in need of protective services and, further, that the only appropriate manner of providing for them is a conclusion they remain in the care of the agency.

P.S.M., the father of these two children, disagrees. He suggests that the children, in fact, can be returned to his care, if not now, certainly in the very near future. I say his care because I am not sure, given the evidence, if he is speaking on his own behalf or with regard to a joint plan on behalf he and the children's mother. He indicates to the court that this was basically an isolated case of drinking. He acknowledges it should not have happened; that the situation should not have progressed to where the children drove the car or witnessed the incident that took place subsequent to their arrival at home. He further indicated that his non-compliance with the agreement he signed with the agency was not of his making as the agency never really established an appropriate method by which he could become involved in either a drug dependency program or drug testing due to his work hours.

If this incident, as portrayed by P.S.M., was an isolated incident, then, in fact, the submission of P.S.M. would certainly carry considerable weight. By that I mean, if the evidence before the court indicated that up to this time and since that time there has been nothing to indicate that this is a family involved in alcohol abuse or, as a result of the use of alcohol, has trouble functioning on occasion, his submission would certainly be appropriate. It would even be more appropriate if he had testified himself as to his current situation and his ability and his plan to be able to take the children. But such is not the case because the evidence, I conclude, overwhelmingly indicates, other than his submission, that this incident of drinking is not isolated. I take this not only from the Minister's evidence but from the other evidence. C.M.W. acknowledges the situation. She acknowledges that there is a problem to be addressed; indicates she has every intention of addressing it and having the children returned to her. P.S.M. himself, in the document he signed, would appear to acknowledge that this was far from an isolated incident. The evidence of the children who say they want to return to their parents acknowledge that this was not an isolated incident. The evidence that the children were living not with one another and separate and apart from their parents at the time the agency became involved with the parents indicates that this was not an isolated incident. The evidence that P.S.M., subsequent to this hearing, lost his licence for driving . . . was charged with and convicted of driving . . . acknowledges this is not an isolated incident.

I conclude that it has been proven to my satisfaction that the children were removed or not allowed to return to a situation in which they would have been in danger. I am satisfied that there is substantial risk and that there is real danger that is apparent on the evidence. The incident of the children driving the automobile is evidence of such risk but there were also problems prior to this event. The drinking continued after the event. There is no indication this situation does not continue to exist. It should also be noted that neither Respondents provided the court with any information as to being able to provide an appropriate residence to house the children at this time. The foregoing allows me to conclude that the children are in need of services pursuant to the sections of the *Act* outlined by the Minister.

Accordingly, I will grant the request and make the finding as suggested. A question at this point is where do we go from here? I suggest I can do nothing but have you return this application to court reasonably soon.

I will order that the order continue with regard to C.M.W.'s undertakings. P.S.M. has not indicated a willingness to enter into any program. I do not know if you, at this stage, or are willing to do that, P.S.M.? He is shaking his head to the contrary. We will adjourn to a future date. This creates problems for C.M.W., as her counsel, I am sure will address, if she plans to prepare, with P.S.M., a plan as a couple for the return of the children given P.S.M. indicates he sees no problem that he should rectify.

The court will give the parties a chance to digest the finding at this time. This is a very early stage of this proceeding. The ages of the children are such that the court is of a view, given their wishes, that every effort be made to have them returned to their parents. Having said that, P.S.M. might be well served to seek legal advice as to the best avenue he may wish to pursue with regard to his continuing interest to have the children under his care.

J.