

IN THE SUPREME COURT OF NOVA SCOTIA  
(FAMILY DIVISION)

**Citation:** Minister of Community Service v. S., 2004 NSSF 97

**Date:** December 7, 2004

**Docket:** SFPACFSA-026735

**Registry:** Port Hawkesbury

**Between:**

Minister of Community Services

Applicant

v.

M.S.

Respondent

**Revised Decision:** The text of the original decision has been revised to remove personal identifying information of the parties on May 30, 2008.

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 judgement or its heading before publication.

Section 94(1) provides:

“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 relative of the child.”

**Judge:** The Honourable Justice Moira Legere Sers

**Heard:** September 17, 2004 - Port Hood, Nova Scotia  
September 23, 2004 - Port Hawkesbury, Nova Scotia

September 24, 2004 - Port Hawkesbury, Nova Scotia

**Written Decision:** December 7, 2004

**Counsel:** Ms. Lindsay McDonald Counsel for the Applicant  
Ms. Louise Campbell Counsel for Respondent

**By the Court:**

- [1] This child protection proceeding commenced by way of a Notice of Taking into Care dated the 13<sup>th</sup> of August, 2003. The Applicant is the Children's Aid Society of Inverness-Richmond and the Respondent is M.S..
- [2] There are three children; K.A.H., born [in 1995]; D.R.H., [born in 1996]; and H.L.S., born [in 2001].
- [3] The identified father of the two oldest children is J.H. of [name of place changed], Ontario. He was not involved with the children during the first child protection proceeding and his whereabouts were unknown to the Applicant for most of this proceeding.
- [4] J.H. has been served notice of the Agency's intention to seek a Permanent Care and Custody Order for all three children as of the 1<sup>st</sup> of June, 2004. He has received the Revised Plan of Care.
- [5] H.L.S.'s father has never been identified.
- [6] This is the second protection application in Nova Scotia.
- [7] There are reports from the Peterborough, Ontario Child and Family Services indicating that they had been involved with M.S. and her family since 1998. They identified that

M.S. was capable of accessing community services and handling stress well. They had concerns regarding the lack of supervision with the children solely in M.S.'s care.

[8] M.S. was involved with the Agency in 2001. The issue of supervision, a lack of provision for the children, difficulty in providing for the children coming to school and hostilities between the school and mother brought the matter to Court in Nova Scotia.

[9] The difficulties at the time related to school attendance, K.A.H.'s difficulties in school, housekeeping standards, parenting, budgeting, supervision, corporal punishment and exposure of the children to domestic violence by the Respondent.

[10] The Respondent ceased using the volunteer services provided by the Agency and on November 1, 2001 a Protection proceeding was commenced. On July 15, 2002, Dr. Hartley prepared a report and made recommendations regarding intensive services.

[11] A Supervision Order was entered into, services were engaged for the mother.

[12] In April, 2003 the Agency ended their involvement due to the improvement in M.S.'s level of parenting.

[13] Once supervision was removed, the mother's level of commitment declined such that in August of 2003 the children were taken into Care. The precipitating factor for the apprehension was when the child H.L.S., aged 2, was found wandering around [name of place changed] unsupervised and apparently unkempt.

- [14] On Sunday, August 10, 2003 H.L.S. was found wandering in the parking lot of her building and could not identify himself. The police were called. The child was shirtless and barefooted. His diaper was overflowing with excrement and urine.
- [15] The police attended at M.S.'s home to attempt to find someone. No one answered the door. The police officer walked through the downstairs but found no one. He indicated that the house was filthy, smelling strongly of garbage and excrement with flies everywhere.
- [16] The police were informed that the child was frequently seen wandering the neighbourhood alone and had to be returned to the home on a number of occasions.
- [17] The child was fed and cleaned. There were bruises on the back of his left thigh. He had other bruises on his upper left shoulder, lower back and running up along his spine. There was a deep red scratch on the child's left upper chest area.
- [18] Cst. Whittington, Cst. Forsyth and Cst. Maxwell went to the Respondent's home and confirmed that the house was dirty, smelt like garbage and excrement. They eventually looked in a downstairs bedroom and found M.S.. They woke her, she leaped from her bed and asked where her children were. The police assisted her in beginning to try to locate the other children who were eventually found playing with neighbourhood children.
- [19] The children were subsequently examined at the hospital. Despite their home environment they were found to be generally well feed and of average size.

[20] The children disclosed to the foster mother that there was rarely food in the refrigerator and that the older children had access to alcohol.

[21] The protection affidavit notes the decline in the standard of cleanness in the home between May 15, 2003 and July 16, 2003. On the July visit what started as simply unclean and untidy surroundings was described as follows:

“The house in disarray, clothing piles in a corner in the kitchen, K.A.H.’s bed soiled with urine and unmade, D.R.H.’s room smelling of urine, faeces smeared on the floor in H.L.S.’s room according to the Respondent M.S., H.L.S. spreads faeces whenever his diaper is full. The workers noted such safety hazards as missing window screens and missing banister railings.”

[22] The Agency reactivated parenting skills, supervision, personal therapy and alcohol and drug assessment to address the outstanding issues.

[23] *This mother* was a foster child early in her life herself. She became involved in the legal system when she was young and indicates, of herself, that she was a dangerous little girl. She was in the Correctional Centre in Halifax and then when she turned 17 in the Kingston’s Women Prison. She indicates that she was there for 3 years until she was 20.

[24] She has been a victim of physical and sexual abuse, both in her mother’s home and she alleges, in Foster Care.

[25] During the Protection Application commencing August 13, 2003, the Agency attached to and included, in support of their application, the July 15, 2002 report that was the result of a consultation to assist in understanding the current level of psychological functioning of M.S. and to make recommendations that would assist in case management and case planning.

[26] Clearly, *K.A.H.* presents as a child with special needs. In the assessment report of December 13, 2001 it was found that *K.A.H.* meet the diagnostic criteria for autism. This created a greater need for consistency and for parent participation in a strategy to address her needs.

[27] During the first protection proceeding the July 15, 2002 report of the clinical psychologist noted that *K.A.H.* had high needs which would continue throughout her life and she would need to have *“significant and sustained involvement by her caregiver.”*

[28] *K.A.H.* is noted to be “compromised in all three spears of psychological functioning; cognitive, emotional and interpersonal.” This created high needs both at home and in the school setting.

[29] An individual program plan was formulated with the school and this child responded well to that program. The school designed the program to respond to *K.A.H.*'s behaviour and address her difficulties. They noted that *K.A.H.* was a child who was highly motivated to learn.

- [30] By June of 2003, the progress K.A.H. made as a result of the programming was said to be remarkable both socially and academically. One of the factors that was noted to improve her level of success was her consistency in attending school. Earlier in the year it had been determined to be unpredictable with frequently being late. Child Protection Services expected and were rewarded with more consistent attendance.
- [31] The school had to exert considerable efforts to ensure M.S. attended meetings in the planning and implementation of this program. She attended one meeting which they felt to be extremely positive. She failed to attend the initial meeting and the meeting in the April review. Her attendance was largely due to the efforts of CAS contacting her and her sister repeatedly encouraging her to attend.
- [32] The involvement of CAS initially occurred at a time that M.S. was struggling financially and had completed a move from Ontario to Nova Scotia. The assessor noted the positive history for violence, criminality and substance abuse. Over the six months of their involvement, the housing situation stabilized and M.S. adopted a plan to return to school and future employment. She was more cooperative in engaging with supports.
- [33] Both D.R.H. and H.L.S. were determined to be, in general, on target although there were specific recommendations made to enhance their developmental progress. The Respondent reported that D.R.H. had a bad temper and was persistently lying.

- [34] Dr. Gerrior is a psychologist contracted to assist in assessing and providing therapeutic assistance to D.R.H.. D.R.H. was referred in May of 2003 because of difficulties between parent and child. He was reported to be aggressive and had a limited attention span with challenging behaviours both at home and at school.
- [35] M.S. came with D.R.H. on the first appointment of May 13<sup>th</sup> and follow up appointments on May 20<sup>th</sup>, June 3<sup>rd</sup>, June 10<sup>th</sup> and June 17<sup>th</sup>. Aside from the difficulties in the home environment Dr. Gerrior found that there did not appear to be any evidence of emotional or cognitive difficulties.
- [36] She indicated that he meet the criteria for Attention Deficient Hyperactivity Disorder and she commenced with planning intervention strategies on a weekly bases over the summer months. Her intervention was focussed on skill building and management of intense emotions. She focussed her attention with M.S. on how to deal with a child having Attention Deficient Hyperactive Disorder.
- [37] Dr. Gerrior noted by report dated June 14<sup>th</sup> that there was progress with D.R.H. in Foster Care yet she perceived there was still a struggle with basic reading and writing skills. D.R.H. was placed on a list to be assessed by a school psychologist to have the psycho-educational assessment completed. She continued attending to her appointments with D.R.H. between March and August of 2004. Critical to her evaluation is the recognition that the kind of attention as a therapist she can give to a client *needs to be augmented by consistent commitment in the home environment. This is a critical piece that will ensure the*



*best use of therapeutic intervention. The presence of a home environment where there is attention to attending appointments and to implementing the therapeutic plan at home is essential to maximize the success of intervention.* She describes D.R.H. in positive terms and advocates for a psycho-educational assessment. She was also able to work with the Foster Parents on a consistent basis.

[38] M.S.'s assessment recommended *intense parenting intervention* to enhance M.S.'s ability to understand her children's developmental and special needs and to provide a safe and clean home environment, among other things.

[39] There was no finding of a cognitive impediment to learning what was required to parent adequately. Indeed, the assessor concluded "her (M.S.) intelligence does not present as a barrier to standard interventions...". The assessor recommended services be implemented to assist her and a review of progress after three months of intense intervention.

[40] The Agency entered into an Order of Supervision on February 20, 2003. The conditions of the Order included that the Order would terminate under the following conditions;

[41] -that the Respondent would cooperate with supervision and services,

[42] - that the Agency would be able to supervise and attend to the home,

[43] -that M.S. would sustain from the use of non prescription drugs and alcohol,

- [44] -the children would remain within the jurisdiction of the Court,
- [45] -that M.S. would cooperate with school authorities to assist her in the educational development of K.A.H.,
- [46] -that M.S. would cooperate with a parental capacity assessment and such other services offered by the Agency.
- [47] M.S. failed to show up for the first scheduled visit with Michael Bryson on the 27<sup>th</sup> of January, 2004.
- [48] M.S. explained that she had to go to the food bank on January 27, 2004 and had to wait one and a half hours there. She was cold, tired and late and she decided not to call Mr. Bryson to let him know. She was not completely convinced of the need for Mr. Bryson's services.
- [49] M.S. had previously missed three appointments with Mr. Bryson prior to the Order.
- [50] Mr. Bryson had been engaged to respond to the enquiry started by M.S., that is, whether her difficulties arose from her own learning difficulties, possibly ADD or ADHD such, that her ability to parent was impaired. The Agency engaged Mr. Bryson to complete the testing necessary .
- [51] This missed meeting and the fact that H.L.S. was found wandering the streets of [name of place changed] unsupervised and in a compromised hygienic state triggered the Agency's decision to take the children into Care on August 10, 2003. The

revised Agency Plan of Care is dated February 18, 2004. The Agency decided to change their original plan to one of Permanent Care.

[52] Under the first protection proceeding, commenced November, 2001, the time limit to effect satisfactory change in parenting these children ended on April 3, 2003. As a result of the increasing deterioration and noncompliance of M.S. with the attendance at Mr. Bryson's office, they took the children into Care on August 10, 2003 and commenced the new protection application.

[53] The Agency placed the children in an approved Foster Home. Their behaviour deteriorated such that they had to be separated in Foster Homes. K.A.H., at 7 years old, was placed in a restricted Foster Placement with a relative.

[54] M.S.'s access with her children was supervised and although she attended late for her supervised visits she has attended regularly.

[55] It is noted that immediately after January 22, 2002, M.S.'s attendance at scheduled sessions with the Family Skills worker Elizabeth DeCoste improved. Immediately prior to July, there were numerous missed appointments; doctor's appointments, parent intervention and supervision appointments, etc.

[56] After the children were apprehended in August, the visits of the home did not indicate any significant changes being made by the mother to prepare the children

for any eventual return. In addition, she failed to show up at a scheduled meeting with the parent's skills worker on the 18<sup>th</sup> and 25<sup>th</sup> of September. There was further information that M.S. was not abstaining from the use of alcohol. And in particular was easily identified leaving a pub on the 26<sup>th</sup> of September, 2003.

[57] As of the 12<sup>th</sup> of January it was noted that the Respondent was regularly late for access visits. She had made unauthorized contact with the children while they were at school and sporting events. She missed eleven scheduled parenting education sessions without notice or excuse.

[58] In generally she has not responded to the requests of the Agency to clean up her premisses. She advised the Agency that she was involved in a drug assessment program in Halifax and upon confirmation it was learned that she was not so enrolled in the program.

[59] Mr. Bryson's report and assessment of learning disorder of M.S. was tendered by letter of March 5, 2004.

[60] Among the other repetitions in the historical information, Mr. Bryson noted the use of alcohol, marijuana, cocaine and speed with cocaine and speed being used historically. He noted addiction treatment was attended and completed and her last use of cocaine was three years ago. Her last use of marijuana was six years ago and at that time she suggested that it was five months since she drank alcohol. He completed testing that would place her within the average range of

intellectual functioning. He did note that the test results strongly suggest that she had Attention Deficient Disorder and that she is more likely to retain information presented visually which would not required sustained concentration and attention. He noted her organizational skills are weak and she required a to-do list as an aid to accomplishing tasks. He gave various recommendations as to the manner in which one should assist M.S. to gain new information.

[61] One recommendation was to employ or contract a service provider outside the Agency to provide the services due to the lengthy involvement M.S. had with the Agency since her early years and to address her mistrust of Agency personnel.

[62] While not a common recommendation this is not so unusual as to be an unreasonable suggestion. No reasons were provided by the Agency as to why they ignored this request. I make no assumptions about their deliberations. M.S. argues, not too strenuously, that this impaired her ability to learn. It may have, in some cases, a considerable effect where it would be incumbent on the Agency to explain why they did not abide by the recommendation of their own assessor. In this case the services have been provided. The Agency has run a proceeding almost back to back and there is a historical pattern of a rise and fall in commitment to adequate parenting that appear to correspond to ultimatums by the Agency. In this circumstance after hearing the Parent Skills worker, I cannot conclude that her approach and style was a serious impediment to learning.

[63] Mr. Bryson, the psychologist who completed the learning disability assessment was then retained to assist in counselling M.S. and by April 7, 2004 he reported that M.S. did not identify any areas that she wished to have counselling on although she did attend all but one of the appointments. He believed that she attended therapy because she was Court ordered to do so and for no other therapeutic reason.

[64] Mr. Bryson acknowledged that she “begrudgingly completed the learning disability assessment”. He noted that the course of treatment for which he was engaged spanned twelve months and during that twelve months M.S. did not identify treatment goals. She was suspicious of any disclosure required as it would be reported to the Agency. She denied that she was affected by her past history. Mr. Bryson noted that she made no appreciable improvement apparently as she was unable to identify treatment goals. Therefore, she made no progress.

[65] He indicated he had no opinion on her ability to parent or her current psychological functioning as he did not assess either. He noted that she did not present as psychotic and there was no evidence of psychosis or delusional thinking.

[66] Finally, in the assessments of K.A.H. dated August 11, 2004, Wendy Digout indicated the following:





































[67] *The assessor noted that when she is in a more chaotic environment she has difficulty. She displays, in stressful situations, hand slapping and obsessive thinking and is greatly*

*diminished in her ability to empathize with others and understand other peoples emotions.*

[68] It was noted that she would benefit from a psycho-educational assessment as well.

[69] In the course of these proceedings progress was made in identifying services to ensure that both children get the psycho-educational assessment required.

[70] The Agency provided a record of Family Support appointments of M.S. from 2002 and 2004.

[71] This record shows that for a period of time between August and December of 2002 there were 25 visits/appointments made and 6 cancelled. Between January and December of 2003 there were 47 visits/appointments made and 24 cancelled and in 2004 there were 25 visits/appointments made and 8 cancelled. For a total of 97 visits/appointments from Family Support throughout the entire period, 38 were cancelled.

[72] There is a period where there is noted improvement and then a deterioration in 2004.

[73] M.S. submitted her first affidavit in August of 2003. She noted that when she missed appointments it was beyond her control. She indicated that her home was untidy because there were three children and cats living there. She denies the allegations with respect to her parenting ability and indicates that she has cooperated with service provides. She indicates that in the beginning in August 2003 her child got out the window of her home and walked down the street. She indicates that was beyond her control and could happen to any parent.



- [74] She indicates the bruising on her child, outside the diaper rash, is not unusual. It is clear from the pictures that there is nothing to indicate that the bruising is unusual.
- [75] She tendered that affidavit to contest the substantial risk finding required to keep the children outside of her home in the second apprehension proceedings. She was unsuccessful in convincing the Court that the children should be returned to her care.
- [76] After Mr. Bryson's assessment, M.S. submitted an affidavit in April of 2004 indicating that she was prepared to follow through with the recommendations, should the services be provided to her. She further indicated she was prepared to see Mr. Bryson for counselling and acknowledged that she had been attending access, was on time and attending for each visit.
- [77] She noted, for the Court's purpose, that there were positive comments throughout the access visits in that she was preparing meals for the children that were healthy, was more confident, was more in control of the children and that the children love her. She also noted that she's made changes in her life style and no longer had individuals in her home after the children were in bed. She noted she was attempting to find employment and she opposed the Agency's Permanent Care and Custody plan, once again reiterating her willingness to accept services.
- [78] On June 29, 2004 she submitted her final affidavit in which she indicated that she had recently experience a separation from her partner whom the children saw as a father figure, that she has ongoing contact with her case worker, that she is committed to attend

supervised access visits with her children and that she believes that these visits are positive, that she is meeting with Ms. DeCoste for an intensive parenting program and Mr. Bryson for therapeutic counselling, that she has cleaned up her yard, that she brings balanced meals for the children and that she is committed to work with school officials. She believes she is alcohol and drug free, recognizes that she has been less than cooperative but wishes to have her children returned to her care.

[79] Clearly she has not involved herself in therapeutic counselling in a positive way. There is no evidence to suggest or to support the notion that her home environment is cleaner or more acceptable for consistent parenting of the children. There is no evidence before me to allow me to conclude that she is alcohol and/or drug free.

[80] The Agency amended their Plan of Care shortly before the hearing.

[81] They remained committed to an application for Permanent Care and Custody but they were going to continue access between the mother and the two older children.

[82] They proposed no access to H.L.S. due to his age and the possibility of adoption.

[83] The access notes indicate that M.S., when supervised, assisted and supported, in segments of time has the ability to create and maintain a positive relationship and attachment between herself and her children.

[84] It is also clear that they love her and that at this point in time there is no reason in the Agency's plan to terminate contact with her. In fact, the Agency is prepared to facilitate that contact

and ensure that they have healthy, appropriate and consistent contact with her in a manner that enhances their life and development.

[85] M.S. has been offered, over the history of these proceedings and prior proceedings, any and all services that would assist her in improving her situation such that the children could be returned to her. There is no intellectual impairment to her functioning that she should be unable to address the concerns as noted.

[86] The one missing piece is her consistent commitment to services and her insight and acceptance that her home environment was sufficiently chaotic as to exacerbate each of the individual children's special needs. The environment she provided failed to adequately address the needs of her children such that they were placed at risk.

[87] Given the length of time, the nature and intensity of services offered, now and in the past, it is not probable that there will be any improvement in immediate future within the time lines of this legislation.

[88] Indeed, the various Agencies have struggled with M.S.'s chronic issues and to a certain extent mobility. They have attempted to make available the services required to make this home environment "good enough" to leave the children with their parent. They have extended their involvement into a second application with a brief break between the first and second.

[89] As a result, the two oldest children have moved into an age group where their prospects of placement may be less than H.L.S.'s. They have an attachment to their mother. While

the mother cannot parent these children on a day to day basis with sufficient consistency, given her limitations, their special needs; which are in part exacerbated by their living circumstances, they do have a connection with her. M.S. with assistance and supervision is able and has shown some consistency in providing a degree of nurturance to her children during supervised access. She prepared good meals and plans activities. They are usually happy to see her.

[90] For this reason currently the Agency has proposed continuing this access, monitoring it, adjusting it based on the needs of the two oldest children, as they are the two that are most connected to the mother. The Agency will be responsible for creating a schedule that best and most appropriately addresses the children's changing ages and stages of development. They have relied in the past on the advice of the children's therapist and this ought to continue.

[91] The Agency has meet the burden of proof and the children will be placed in the Permanent Care and Custody of the Agency with access to the mother in accordance to *S. 42(2) of The Children and Family Services Act.*

[92] H.L.S. will be placed in the Permanent Care and Custody of the Agency without access in order to promote the possibility of adoption.

[93] The Agency have recommended the termination of access with his biological family including access with his half brother and sister. This will enhance the options for adoption.

[94] The Agency has noted on page 4 paragraph (d) of their Revised Plan of Care their intentions with respect to access and the Court endorses the promotion of sibling access as well as ongoing access with the mother as is appropriate in such a manner so as to enhance their development and not sabotage their long term placement.

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Justice M. Legere-Sers  
A Justice of the Supreme Court  
Family Division