

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Child and Family Services Act*,
S.N.W.T. 1997, c.13, as amended;

AND IN THE MATTER OF the child,

“W.”

Apprehended: July 18, 2009

REASONS FOR DECISION

of the

HONOURABLE JUDGE ROBERT GORIN

**These Reasons are subject to Publication Restrictions pursuant to s. 87 of the
Child and Family Services Act, S.N.W.T. 1997, c. 13,**

- 87.** No person shall publish or make public information that has the effect of identifying
- (a) a child who is
 - (i) the subject of the proceedings of a plan of care committee or a hearing under this Act, or
 - (ii) a witness at a hearing; or
 - (b) a parent or foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family.

And further...

- 90.** Every person who contravenes a provision of this Act for which no specific punishment is provided is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000, to imprisonment for a term not exceeding 12 months or to both.
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Application for a Permanent Custody Order by the Director of Child and Family Services, pursuant to section 28(1)(d) of the *Child and Family Services Act*.

Heard at: Yellowknife, Northwest Territories
July 29, 2009

Reasons filed: July 30, 2009

Counsel for the Director: S. Gullberg
Counsel for the Mother: D. Large
Counsel for the Father: Self represented

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[1] This is an application for confirmation of an apprehension carried out pursuant to the provisions of the *Child and Family Services Act*.

[2] Subsection 12.4(1) of the *Act* provides:

(1) Where, on hearing an application for an apprehension order, a court determines that

(a) there are reasonable grounds to believe that the child needs protection, and

(b) The person who apprehended the child had, at the time of the apprehension, reasonable grounds to believe that the child’s health or safety would be in danger if the child were returned to a person having lawful custody of the child,

the court shall make an order confirming the apprehension.

[3] Subsection (4) of s. 12.4 states:

(4) Where the court determines that the grounds referred in paragraphs (1)(a) and (b) have not been established, it shall dismiss the application.

[4] I conclude that based on the evidence before me there are not reasonable grounds to believe that the child needs protection as defined by the *Act*. Therefore I am required to dismiss the application and hereby do so. I note that my decision does not preclude the Director of Child and Family Services from applying for a declaration that the child is in need of protection and a supervision or protection order.

[5] Based on my ruling it is unnecessary to determine whether or not the peace officer or the child protection worker “X”, was the individual who carried out the apprehension. I will, however, say that based on the information provided to her and the situation with which she was confronted, “X” acted in a completely appropriate manner when she carried out her duties on July 18th, of this year. If I were to assume that she was the person who carried out the apprehension, I would have no difficulty in finding that the grounds referred to in s. 12.4(1)(b) were present.

Analysis

[6] The reasons for my decision are as follows:

[7] As already stated, I find that the Applicant's problem is in the requirement set out in s. 12.4(1)(a).

[8] I of course appreciate that reasonable grounds import a standard far lower than a balance of probabilities. I also appreciate full well that I can base my decision on an affiant's information and belief: s. 81(3) *Child and Family Services Act*. This provision aside, when determining the existence of reasonable grounds it is entirely appropriate to consider hearsay evidence.

[9] I also take into account that the child in question is only 5 months old.

[10] In arguing that there are reasonable grounds to believe that the child is in need of protection, the director relies on subsections (k) and (r) of subsection 7(3) of the *Act*, which sets out the situations when a child shall be considered in need of protection.

[11] These two subsections provide:

(2) A child needs protection where

(k) the child has been exposed to repeated domestic violence by or towards a parent of the child and there is a substantial risk that the exposure will result in physical harm or emotional harm to the child and the child's parent fails or refuses to obtain services, treatment or healing processes to prevent the harm;

.....

(r) the child's parent is unavailable or unable or unwilling to properly care for the child and the child's extended family has not made adequate provision for the child's care or custody;

[12] The evidence set out in the affidavits is fairly straightforward. I find it unnecessary to review the affidavit material at great length at this point.

[13] The evidence discloses one specific incident of violence between the parents. That act of violence occurred on July 18 when an altercation broke out between the two and the mother punched the father in the face because he was going out for the evening. It appears that both parents had been consuming alcohol on the evening in question.

[14] The affidavit of "X" discloses that on July 15, 2009, the parents had entered into a Plan of Care Agreement "for issues relating to family violence and alcohol misuse." This passage is contained in paragraph 3 of the affidavit of "X".

[15] The supplementary affidavit of "Y", also a child protection worker, contains general references to alcohol misuse and family violence. At paragraph 2 the affidavit states that on June 17 the parents entered into a 6 month Plan of Care Agreement. It also states that "The child protection concerns included alcohol misuse and family violence."

[16] At paragraph 9 of the affidavit of "Y", a similar such reference occurs. The supplementary affidavit states: "That on July 16, 2009, I explained to the father that I was concerned about ongoing alcohol use and violence between him and the mother. I reviewed the goals of the Plan of Care Agreement with him and explained that the situation needed to change as his son was at risk as a result of their behavior. The father stated that he understood the risk to his son." Once again nothing specific is set out.

[17] At paragraph 3, “Y” refers to an incident which occurred on July 15 during which the mother went to Bailey House and pulled a fire alarm to get the father’s attention. She is reported to have been intoxicated and her son was in her care at the time. Apparently the incident occurred as a result of the father leaving the home. She had expected him to care for their child while she was drinking. She was angry that he had left her with their child when she was intoxicated. She proceeded to Bailey House, apparently with her son. When he would not speak to her, she pulled the fire alarm. As a result the mother was detained in RCMP cells. The father agreed with the on call child protection worker and her supervisor that he would care for their son at the mother’s residence.

[18] When the four arrived at the apartment it was observed to be untidy on the floor. Four empty beer cans were in the sink as well as a beer can and cooler on the coffee table.

[19] At paragraph 17 of the affidavit of “Y”, it states that the mother was not charged as a result of the July 15th incident. The following day, the mother met with “Y” and another child protection worker. She admitted drinking four beers and two coolers. She admitted to suffering from post partum depression. It would appear that she conceded that her child was at risk and that she needed to change her relationship with the father.

[20] I think that the concession by both parents that the child was at risk is something I can take into account. But ultimately, it is this court which must determine whether or not the reasonable grounds referred to in s. 12.4(1)(a) are present.

[21] I have, of course considered the entirety of all of the affidavit material which has been filed in this case. I have also carefully considered the submissions of counsel.

[22] In order to find that there are reasonable grounds that the child is in need of protection pursuant to s. 7(3)(k) I must find, among other things, that there are reasonable grounds to believe that the child has been exposed to repeated acts of violence by or towards a parent of a child. The incident of July 18th was one such incident. The incident of July 15 does not, in my view, disclose an act of violence by or towards the parent of the child in question. The affidavit material alludes to issues and concerns over alcohol misuse and family violence. However, these references are very indefinite. In saying this I do not fault “Y”. However, I must consider the evidence as it is.

[23] I conclude that based on the affidavit material before me, I do not have reasonable grounds to believe that there are reasonable grounds to believe that “the child has been exposed to repeated domestic violence by or towards a parent of the child and there is a substantial risk that the exposure will result in physical or emotional harm to the child. ...”

[24] After considering the two specific incidents as well as the other information set out in affidavit materials, I am also unable to conclude that there are reasonable grounds to believe that “the child’s parents are unavailable, unable or unwilling to properly care for the child and that the child’s extended family has not made adequate provision for the child’s care or custody.” In neither case was the child abandoned. In neither case was there any real suggestion that both parents were so incapacitated that they could not adequately care for their child.

Conclusion

[25] I find that the affidavit material does disclose bad parenting. However, I also find that although the child is only 5 months old, there are no grounds to believe that the child is in need of protection pursuant to the provisions of subparagraphs 7(3)(k) and (r), relied upon by the director. I am unable to find that there are reasonable grounds to believe that the child is in need of protection pursuant to any of the other provisions contained in subparagraph 7(3).

[26] In arriving at this decision I have, of course, excluded from my mind any information concerning the relationship between the mother and the father which has come to my attention in other previous unrelated proceedings.

[27] I thank counsel for their capable assistance in this matter. Once again, the Director's Application is dismissed.

Robert D. Gorin
J.T.C.

Dated at Yellowknife, Northwest Territories,
this 30th day of July, 2009.

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