

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 children,

A. B.,
Born: July 16, 2009

C. D.,
Born: November 11, 2010

**REASONS FOR DECISION
of the
HONOURABLE JUDGE CHRISTINE GAGNON**

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

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 of 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.

Application for a Declaration that the children are in need of protection and for a supervision order pursuant to section 28(1)(b) of the *Child and Family Services Act*.

Heard at: Inuvik, Northwest Territories
February 17, 2014

Date of Decision: March 7, 2014

Counsel for the Director: Betty-Lou MacIlmoyle

Counsel for the Mother:

Jeannette Savoie

2014 NWTTC 13

Date: 2014 03 07

File: T3-CP-2012-000001

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A. BACKGROUND AND ISSUES

[1] The Director of Child and Family Services applies for a 6-month supervision Order with respect to the children A.B. and C.D., alleging that the children are in need of protection pursuant to paragraphs 7(3) (b) and 7(3) (k) of the *Child and Family Services Act*¹.

[2] The parents take the position that the application was filed more than 45 days after a report was made to a Child Protection Worker and subsidiarily, that the Director failed to demonstrate a substantial risk of harm on a balance of probabilities.

[3] The first issue is whether the failure to file an application for a supervision Order can be cured by the Court. The second issue attaches to the interpretation of the word “substantial” found at section 7(3) paragraphs (b) and (k). I see a third issue, which is whether the affidavit evidence establishes that the children are in need of protection.

[4] The parties relied on affidavit evidence and documentary evidence (Plan of Care Report). Oral arguments were heard on February 17, 2014.

¹ S.N.W.T., c.13, as amended

B. ANALYSIS

1. The time to file an application

[5] The Director filed its application on November 27, 2013 for a supervision Order. The application alleges that on October 9, 2013, Child Protection Worker Coreenna Hult received a community concern stating that A.B. had made a report to the caller that he had seen his father and mother fight. This is a report within the meaning of section 8(1) of the *Act*. October 9, 2013 is the day after which the delay of 45 days to make the application for a declaration that a child needs protection and a protection order starts.

[6] The Director relies on section 16 of the *Act* and alleges that their time to apply for a protection Order is “as soon as possible” after the time at which a plan of care is not established. The Child Protection Worker met with the mother on October 22nd, 2013. According to the affidavit evidence, the purpose of the meeting was to discuss child protection concerns. The Child Protection Worker told the mother that she would seek a protection Order. There is no evidence that the Child Protection Worker intended to discuss a plan of care or to discuss the need to form a plan of care committee. I find that section 16 of the *Act* does not apply to the present situation.

[7] I find that the delay to make an application for a protection/supervision Order started on the day following the report made on October 9, 2013. This delay ended on November 23, 2013, a Saturday. Section 24(11) of the *Interpretation Act*² provides that when the time limit for filing or submitting a document in an office expires or falls on a day the office is not open for any reason during its regular operating hours, the time limit is extended to include the next day the office is open, which means Monday November 25, 2013. The application was filed at the Territorial Court Registry on November 27, 2013, two days after the delay expired.

[8] Section 83 of the *Child and Family Services Act* provides that: “A court may vary any time specified in or under this Act before or after the time period has expired” and it may do so if “(c) the court considers it to be in the best interests of the child to do so.”

[9] Although the Director did not apply to extend the time to file its application, I feel I have a duty to consider whether I should extend the delay.

[10] The governing principle of the *Child and Family Services Act* is a child’s best interest. This is reflected in the wording of section 83(c). I infer that if I found that it was not in a child’s best interest to extend the delay, I could use my discretion to dismiss the Director’s application.

[11] This application was brought as a result of a legitimate concern for the well-being of A.B. and C.D., upon a community member reporting that A.B. was upset after seeing his parents fight. The application was made two days after the delay expired, which is a very short period of time.

² R.S.N.W.T. 1988, c. I-8

[12] I find that it would be unfair *not* to look at the merit of the application and I extend the delay by two days in order that the application for a declaration that the children are in need of protection and the issuance of a 6-month supervision Order be considered.

2. The substantial risk

a) A working definition

[13] The parents allege that the *Act* creates a high threshold by requiring that the Director establish a substantial risk. This expression has been interpreted in a number of decisions.³ I accept that in the context of the *Child and Family Services Act*, “substantial” means actual or real, as opposed to illusory or speculative, while “risk” means a real chance of danger to the health or safety of a child.

b) Whether or not a substantial risk has been demonstrated

[14] The Director says that the parents refuse to work with the Child Protection Workers and that they refuse to obtain services. The Director is concerned that A.B. and C.D. are witness to incidents of family violence and that there is a substantial risk that they will suffer emotional harm as a result. The Director also refers to its past involvement with this family and says that this information is relevant to the present determination.

[15] The mother says that she is currently accessing counseling, that she is attending school and that she knows what to do to protect her children from harm. She says that her children are not in need of protection.

[16] In order for the application to succeed, the Director must demonstrate, when they rely on section 7(3) (k), that

- a) children have been ***repeatedly*** exposed to domestic violence by or towards a parent;
- b) there is a real danger of physical or emotional harm to the children as a result; ***and***
- c) the parent takes no steps to ***prevent the harm*** by failing or refusing to access services, treatment or healing processes.

[17] The assessment of whether children need protection is factually-driven. The Director emphasizes its involvement with this family since 2009. They allege incidents of domestic violence going back to that time and suggest that this has a compounding effect from which I must infer therefore the real danger of at least emotional harm to the children.

³ *Winnipeg Child and Family Services v. K.L.W.* [2000] 2 S.C.R. 519; *Nova Scotia (Minister of Community Services) v. M.A.B.*, [2013] N.S.J. No. 302; *Catholic Children's Aid Society of Metropolitan Toronto v. A.D. (Ont. Ct. (Gen. Div.))*, [1993] O.J. No. 3129.

[18] The Director tendered a Plan of Care in support of the present application, in which one reads: “there are no records indicating that the childrens’ (*sic*) health and development is (*sic*) anything less than satisfactory.”

[19] Aside from the allegation that A.B. was upset when he saw his father hit his mother on October 7, 2013, there is no evidence of actual emotional or physical harm to support the application. The concerns of the Director are instead founded on the fact that incidents of domestic violence by or towards the mother are being reported at regular intervals and have been reported since the children were born.

[20] While it is one thing to observe that the mother is often a victim of domestic abuse, it is another to determine whether her victimization has had any impact on her children. I may choose to take judicial notice of the fact that any child who witnesses violence will suffer a trauma, but I think I can only do so on the strength of specific evidence that that the children have been repeatedly exposed to this violence.

[21] The date of the first supervision Order is important, because this order was based on incidents alleged to have happened in the years and months that preceded it. I infer that the supervision Order was made to respond to those past incidents. What seems more relevant to me is to examine what happened since the supervision order was made on June 4, 2012.

[22] The affidavit of Solange Cormier filed November 27th, 2013 reveals the following incidents:

During the period of Supervision, from June 4, 2012 to December 4, 2012:

June 15: father drinking – children present – no harm observed or suffered. No allegation of domestic violence.

August 3, 2012: father drinking – argument with mother **in front of older child. The younger child was not present.**

October 30, 2012: allegation of mother having been assaulted by her partner (not the children’s father); however the **children were not present.**

Since December 4, 2012:

In December 2012 and July 2013, there have been reports about violence but the **children were not present.**

On October 7, 2013: the parents fought **in front of the children.** The RCMP was called. On October 9, 2013, A.B. phoned someone to report that he had seen his father and mother fight and that he “pulled daddy off mommy and punched daddy.” The child was upset and crying.

There were no other allegations until November 27th, 2013. A concern was reported on December 29th, 2013, **but the children were not present.**

There was a further recent allegation of domestic violence, on January 18, 2014, where the children were present.

[23] Over the past 18 months, the children were witness to three incidents of domestic violence.

[24] In contrast, from May 2010 to June 2012, there were 9 incidents of domestic violence which the children observed, or in which one of them was involved. With respect to the alleged incidents of 2010 to 2012, the Director intervened by entering into Plan of Care agreements with the parents and eventually in June 2012, by seeking a determination that the children needed protection.

[25] Although I find that there have been many incidents of violence within the family home, the number of incidents of domestic violence perpetrated in front of the children has decreased since June 4, 2012.

[26] Without evidence other than the statement in the Plan of Care that the children's health and development is nothing less than satisfactory, it is difficult to conclude that at this time, or even at the time of the application, there is a substantial risk that the children will suffer physical or emotional harm as a result of this exposure beyond a finding that there is an inherent risk of emotional harm to any child who witnesses even only one incident of domestic violence.

[27] The exposure to domestic violence and the risk of harm are not the only elements of section 7(3) (k) of the *Act*. The Director must also satisfy me on a balance of probabilities that the parents refuse or fail to obtain services, treatment or healing processes to prevent the harm before I declare that the children are in need of protection.

3. Whether the Director has shown that the children are in need of protection

[28] I will therefore direct my attention to any evidence which would address this issue.

a) Evidence on behalf of the Director

[29] In her affidavit, Solange Cormier writes at paragraph 48 that during a meeting on December 11, 2012, "both (parents) had made it clear during previous meetings with Social Services that they did not want to sign a plan of care agreement." However, the purpose of that meeting was not to discuss services to be offered, but to conclude the supervision Order.

[30] At paragraph 50, Ms Cormier writes about a meeting of a Child Protection Worker and the mother on August 9, 2013. She had a conversation with the mother about a report and she investigated into the allegations, but there was no evidence that services were offered.

[31] At paragraph 56, the affiant says she met with the mother; she discussed her concerns but did not offer services.

[32] She states in her affidavit at paragraph 57 that “community resources have been offered to address the issues”. In the Plan of care of December 2013, under the title “Services Currently being Offered to the Family”, one reads:

“Historically, the family has entered into four plan of care agreements since July 2009, and one supervision order issued in 2012. The family has been encouraged to attend community resources to learn new strategies to deal with parental conflict, family violence and ongoing issues surrounding alcohol and alleged illegal drug use.

(...) Previously, (the parents) have attended counselling regularly, but they have not accessed any other community resources or supports.

Currently there are no services being offered to (the parents)”.

[33] I find that any services offered to the parents have been offered prior to and during the supervision Order of June 4, 2012.

[34] It is clear that the parents refuse to talk to the Child Protection Workers when they ask to meet. The parents need to accept that the Child Protection Workers perform their duty and that they must be treated with the same respect that they themselves receive from them.

[35] However since no services were offered, no service was refused. There is no evidence that the services were offered to the children and that the parents refused them. I do not understand the expression “fails or refuses to obtain services (...) to prevent the harm” as meaning to refuse to speak to a Child Protection Worker.

[36] Considering the purpose of the *Act*, an offer of services in the context of section 7(3) (k) must be something more than a visit made by a Child Protection Worker to a family to discuss their concerns with the parent. It has to include an offer to a parent of a service which will help the parent prevent harm to his or her child.

b) Evidence on behalf of the mother

[37] The mother filed an affidavit in which she says that:

“(a) I have been attending school for the past two years and am now attending a business course so that I can obtain employment in that field.

(b) I attend counselling offered through the community college.

(c) I am sober and not taking drugs.

(d) I am able to take care of my children.”

[38] She adds that:

“When I.K. or J.B. have been in my home acting inappropriately, I have called the RCMP to intervene as this is not acceptable behavior in front of my children.

I believe that I can keep my children safe without the Director’s intervention.”

[39] This undisputed evidence must be given fair consideration. I accept the mother’s evidence that she is accessing counselling through her own channels. The education that she is receiving is undoubtedly aimed at improving her self-sufficiency and self-esteem, which can only be beneficial for her and her children. The totality of the evidence suggests that the mother is not consuming drugs or alcohol.

[40] I am satisfied that she did not refuse or fail to obtain services as none were offered by any Child Protection Worker since the end of the supervision Order. I am satisfied that the mother is accessing treatment or healing processes to prevent the harm to her children.

[39] I have not discussed the application of s. 7(3) (b) of the *Act*, and counsel have not placed great emphasis on it in their argument. It is clear to me that this section does not apply to the facts before me. There is ample evidence on this file that the mother is able to care, provide and supervise her children adequately.

[40] I find that the Director has not demonstrated that the children are in need of protection pursuant to section 7(3) paragraphs (b) and (k) of the *Act*.

C. CONCLUSION

[41] For the reasons stated above, the application by the Director for a declaration that the children are in need of protection and that the children remain with their parents subject to a supervision order is dismissed.

Christine Gagnon
J.T.C.

Dated at Yellowknife, Northwest
Territories, this 7th day of March,
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