

Re : R.(A) and R.(S); and
M.M. v. D.R., 2016 NWTTC 09

Date: 2016 05 12
File: T1-CP-2013-000006
T1-FM-2015-000001

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,

R., (A.)
Born August 30, 2011

R., (S.)
Born January 25, 2014

APPREHENDED: April 9, 2014

- and -

IN THE MATTER OF the *Children's Law Act*, S.N.W.T. 1997, c. 14, as amended;

M.M.

Applicant

- and -

D.R.

Respondent

**REASONS FOR DECISION
of the**

HONOURABLE JUDGE B.E. SCHMALTZ

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

Heard at:	Yellowknife, Northwest Territories
Date of Hearing and Decision:	March 23 and 24, 2016
Reasons Filed:	May 12, 2016
Counsel for the Director:	B.L. McIlmoyle
Counsel for S.R.	J. Savoie and J. Brunet
Counsel for M.M.	J. Walsh

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A. INTRODUCTION

[1] This is an application by the Director of Child and Family Services (the Director) for an Order placing A.R., born August 30, 2011, and S.R., born January 25, 2014, (the Children), in the permanent custody of the Director pursuant to section 28(1)(d) of the *Child and Family Services Act*, S.N.W.T. 1997, c. 13 (the

Act). D.R. is the mother of both Children, and M.M. is the father, of S.R. A.R.'s biological father is not known at this time.

[2] M.M. has also brought an Application for custody of S.R. pursuant to section 20(1) of the *Children's Law Act*, S.N.W.T. 1997, c. 14. Both Applications were heard together.

[3] The Director, the father, M.M., and the mother, D.R., all appeared on the Application represented by counsel.

[4] At the hearing M.M. testified, as did both of his parents; D.R. also testified; and the Director called two child protection workers, and the Foster Mother of the Children.

[5] Four joint Exhibit Books were entered at the Hearing containing documentary evidence.

B. HISTORY OF SOCIAL SERVICES INVOLVEMENT

[6] Yellowknife Health and Social Services Authority (Social Services) was first involved with D.R. in early October 2011. At that time D.R. was 17 years old, and A.R. was just under 2 months old. D.R. was a young mother in difficult circumstances. D.R. had spent much of her childhood in foster care, and although her mother and three sisters were also in the community, her family members faced issues of their own and were not always able to provide support to D.R. Like D.R., her sisters had also been in foster care, her mother had addiction issues and at times was homeless, her family had financial difficulties, and her sisters had children of their own to care for.

[7] As a minor D.R. entered into a Voluntary Services Agreement with Social Services, and then later a Plan of Care Agreement to assist her with caring for her young son. D.R. was to start attending school or find work, attend regular visits with A.R., and get help with her addiction and/or substance abuse issues. There is also information indicating that D.R. may have been dealing with depression.

[8] In September 2012, when A.R. was just over a year old, D.R. entered into a Plan of Care Agreement with Social Services, placing A.R. in the temporary custody of the Director. D.R. did not abide by the Plan or Care Agreement and the Director brought an application for a one year temporary custody order for A.R. In April 2013, by a consent order, A.R. was placed in the temporary custody of the Director for nine months. A.R. has been in the custody of the Director since that time.

[9] When D.R. turned 19 years old, no longer being a minor, she was able to access other resources and options. D.R.'s second child S.R. was born 4 months before D.R. turned 20. After S.R. was born, D.R. continued to have difficulties with substance abuse, and Social Services continued to be involved. S.R. was apprehended on April 9, 2014, and has been in the care of the Director since that time.

[10] Both A.R. and S.R. reside in the same foster home. A.R. has lived with this family since August 2012 and S.R. has lived with them since April 2014.

[11] The Children's foster mother, M.L., testified at the hearing. She and her husband have three sons who are 4, 6, and 8; A.R. is now 4½, and S.R. is 2 years old. The long term plan for the Children is that their current foster family would adopt them. D.R. is supportive of the family adopting the Children. M.L. testified that she believes it is very important for the Children have a relationship with their

biological families, and to “know who they are and where they come from.” She also believes it is very important for the Children to learn their language. M.L.’s interactions with D.R. have always been positive; M.L. has never had any contact with M.M. or his family.

C. POSITION OF THE PARTIES

C.1 D.R. (The Children’s Mother)

[12] D.R. consented to the Director’s Application, though she would want to have access with the Children, maintain contact with them, and remain part of their lives. There has been no evidence and there is no reason to find that D.R. does not love and care deeply for her children, and I find that her position on this Application is one taken after much consideration for the welfare of her children.

C.2 M.M. (S.R.’s Father)

[13] M.M. opposed the Director’s Application with respect to his daughter S.R. M.M. wanted S.R. to come and live with him ‘because she is his daughter’.

[14] M.M. testified that he was in a relationship with D.R. for approximately 6 months, and had lived with D.R. for approximately 2 months in March and April, 2014. S.R. was born January 25, 2014, and apprehended April 9, 2014.

[15] In the affidavit of Sarah Welsh, sworn April 11, 2014, M.M. was in D.R.’s home when Social Services attended on March 11, 2014, and on March 13, 2014. On both occasions, M.M. was intoxicated. In that affidavit, Ms. Welsh further stated: “D.R. has been responsible for the care of S.R. since her birth. M.M. has, thus far, been uninvolved with the day to day care of S.R.”

[16] M.M. returned to his home community of Fort Good Hope around the time of S.R.’s apprehension. Since S.R.’s apprehension, M.M. has made no enquiries to

Social Services, in either Yellowknife or Fort Good Hope, about S.R. M.M. saw S.R. for the first time since her apprehension for approximately an hour and a half on the day before this hearing began.

[17] M.M. has a supportive extended family. His mother and his father both testified at the hearing, and both were supportive of M.M. having custody of S.R. M.M. lives with his mother and father along with his sister, her partner and their son. M.M.'s father travels to Yellowknife approximately once a month with his work, and M.M.'s mother joins him occasionally; both have had visits with S.R. since S.R. has been in care.

[18] M.M.'s father testified that M.M.'s partner from Tulita also lives in the family home. Neither M.M. nor his mother mentioned that M.M.'s partner lives with them, or even that M.M. was in a relationship. There was no evidence as to what M.M.'s partner's views are with respect to M.M.'s application for custody of S.R., or if she is even aware of the application.

[19] M.M.'s father has a criminal record. He has been convicted of spousal assault and received a jail sentence; he was convicted of sexual assault in 1998 and sentenced to six years. He agreed that he had been sentenced to jail 'numerous times'. M.M.'s father testified that he quit drinking alcohol three years ago as he was "fed up with the lifestyle".

[20] At the end of the evidence, I knew little of how M.M. intended to meet his responsibilities as a father. M.M. has an 8 year old daughter who also lives in Fort Good Hope with her mother; M.M. testified that he sees his 8 year old daughter every day, and she stays with him every other weekend. He does not pay child support, but gives her mother money when he has some. The last time he worked

was last summer; he could not get firewood this winter as he had no truck. He has a large extended family in Fort Good Hope.

[21] Social Services booked and paid for a flight from Fort Good Hope for M.M. to come to Yellowknife on July 27, 2015, to visit S.R. On July 27, 2015, M.M. did not board the flight, did not visit S.R., and did not call Social Services to reschedule the visit, or let Social Services know he would not be coming to Yellowknife.

[22] M.M. testified that he had never called Social Services to ask about S.R. because he did not know the phone number. M.M. never made any inquiries of Social Services in Fort Good Hope with respect to S.R. M.M. has no bond or even connection with S.R. besides being her biological father.

D. M.M.'s APPLICATION FOR CUSTODY OF S.R.

[23] Section 17 of the Children's Law Act states that an application in respect of custody of a child shall be determined in accordance with the best interests of the child, with a recognition that differing cultural values and practices must be respected in that determination. Section 17(2) sets out the considerations in determining the best interests of a child:

17. (2) In determining the best interests of a child for the purposes of an application under this Division in respect of custody of or access to a child, the court shall consider all the needs and circumstances of the child including

(a) the love, affection and emotional ties between the child and

(i) each person entitled to or seeking custody or access,

(ii) other members of the child's family, and

(iii) persons involved in the care and upbringing of the child;

- (b) the child's views and preferences if they can be reasonably ascertained;
- (c) the child's cultural, linguistic and spiritual or religious upbringing and ties;
- (d) the ability and willingness of each person seeking custody to, directly or indirectly, provide the child with guidance, education and necessities of life and provide for any special needs of the child;
- (e) the ability of each person seeking custody or access to act as a parent;
- (f) who, from among those persons entitled to custody or access, has been primarily responsible for the care of the child, including care of the child's daily physical and social needs, arrangements for alternative care for the child where it is required, arrangements for the child's health care and interaction with the child through, among other things, teaching, playing, conversation, reading and discipline;
- (g) the effect a change of residence will have on the child;
- (h) the permanence and stability of the family unit within which it is proposed that the child live;
- (i) any plans proposed for the care and upbringing of the child;
- (j) the relationship, by blood or through adoption, between the child and each person seeking custody or access; and
- (k) the willingness of each person seeking custody to facilitate access between the child and a parent of the child who is seeking custody or access.

[24] I find that the actions of M.M. since April 2014 when S.R. was apprehended, up to the present clearly show a lack of interest or commitment to S.R.; M.M. has done nothing to establish a relationship with his child. M.M. took no steps to ensure that S.R. was cared for and provided for, or even inquire about her well-being. He took no steps to accept the responsibility he had to care for her. M.M. had responsibilities to S.R., and for over 23 months M.M. ignored those responsibilities.

[25] M.M. has never had any meaningful contact with S.R. This is unfortunate for both M.M. and S.R., but it is the situation. At this point in S.R.'s life, she has only known her foster family as her family. She has been raised in that family with her brother and her three foster brothers. Her foster mother testified that she sees no distinction between S.R. and A.R., and her other three children – they, as she says of all the children, “are our family”.

[26] Parenting involves hard work and often self-sacrifice; it involves being able to see the necessity in some situations of putting aside one's personal wants or desires for the short and long term benefit of one's child. M.M. has chosen to allow others to be responsible to care and provide for, and to supervise and protect S.R. M.M.'s behaviour shows an unacceptable lack of commitment towards developing a parent/child relationship with S.R. in order to enable S.R. to be a wanted and needed member of his family unit.

[27] I keep in mind that if M.M. is not successful in his application for custody of S.R., that S.R. will be placed in the permanent custody of the Director, being that D.R. consents to the Director's application. And the words of Stortini, Co. Ct. J. in the case of *Re Brown et al.* (1975), 23 R.F.L. 315 (at 319) are therefore appropriate:

... [T]he community ought not to interfere merely because our institutions may be able to offer a greater opportunity to the children to achieve their potential. Society's interference in the natural family is only justified when the level of care of the children falls below that which no child in this country should be subjected to. In deciding on such intervention the court must consider the best interests of the children in respect of their biological, social, emotional, cultural and intellectual development.

[28] I agree with that statement. No child in this country should be subject to the neglect that S.R. has been subject to by M.M.'s complete lack of interest or

involvement in her life over the past 2 years. All children deserve to be a wanted and needed member of the family, in a loving, caring and stable environment. M.M. has *chosen* not to participate or be a part of that environment. I am not satisfied that he could now provide that environment.

[29] Section 17(4) of the *Children's Law Act* provides the court may consider the past conduct of a person where such conduct is relevant to a person's ability to act as a parent¹. I accept that M.M. wants custody of S.R. because she is his daughter. But I cannot ignore that over the past two years he took no steps to be her father, to establish a relationship with her, to support her, to provide for her, to protect her, and again, even to enquire about her well-being.

[30] No parent/child relationship exists between M.M. and S.R. M.M. has shown no interest in S.R.'s well-being, no commitment to S.R. There is no evidence that M.M. is prepared or able to care for S.R., to protect her from abuse and harm and from the threat of abuse and harm, and to care and provide for and to supervise and protect her. He never has.

[31] If M.M. was given custody of S.R., she would be taken from the only family she has ever known, she would be taken from her older siblings – her biological brother and her three foster brothers, her foster mother and foster father, the family unit that she has been a part of practically all her life. D.R., S.R.'s mother, has had much more contact with S.R., and though not always consistent, I accept that D.R. has a relationship with S.R., and I accept that D.R. loves S.R. and wants to remain a part of S.R.'s life. If S.R. were taken from Yellowknife, realistically she would have little or no contact with her mother, her brother, or her foster family. In all of the circumstances, I find that it would not be in S.R.'s best interest to be placed in

¹ 17(4) of the *Children's Law Act* states: Subject to subsection (3), a person's past conduct may be considered in an application under this Part in respect of custody of or access to a child only where the court is satisfied that it is relevant to the person's ability to act as a parent.

M.M.'s custody, a person who has never shown any concern or interest in her well-being. M.M.'s application for custody of S.R. is dismissed.

E. CHILD IN NEED OF PROTECTION

[32] Section 2 of the *Child and Family Services Act* states, in part, that the *Act* shall be administered and interpreted in accordance with the principle that *children are entitled to protection from abuse and harm and from the threat of abuse and harm*. And further that *parents are responsible to care and provide for and to supervise and protect their children*². Those are important principles to keep in mind – both the right of all children, and the corresponding responsibility of all parents.

[33] In order to succeed on this Application, the Director must first establish that the Children are in need of protection. Section 7(3) of the *Act* sets out circumstances in which a child will be found in need of protection. There are numerous situations in which a child can be found to be in need of protection, but I will only refer to the provisions of s. 7(3) that are relevant to this application:

7(3) A child needs protection where

...

(i) the child has been subject to a pattern of neglect and there is a substantial risk that the pattern of neglect will result in physical or emotional harm to the child;

...

(p) the child has been abandoned by the child's parent without the child's parent having made adequate provision for the child's care or custody and the child's extended family has not made adequate provision for the child's care or custody;

...

² *Child and Family Services Act*, ss. 2(b) and 2(e), emphasis added

(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

[34] I find that the actions of M.M. since April 2014, up until the present clearly show a pattern of neglect in the relationship that he has with his child. M.M. took no steps to ensure that S.R. was cared for and provided for, or to accept the responsibility he had to care and provide for her. M.M.'s behaviour shows an unacceptable lack of commitment towards developing a parent/child relationship with S.R.

[35] At this point in S.R.'s life, she has only known her foster family as her family.

[36] D.R. consented to the Director's application that both the Children be placed in the permanent custody of the Director. Difficult as it was for D.R., she recognizes that she is not in a position to care for her children, or meet their needs at this point.

[37] I find that both A.R. and S.R. are in need of protection.

[38] Having found the Children in need of protection, and reviewed the Plan of Care Report, I must consider the options available under the *Act*.

F. THE CHILD AND FAMILY SERVICES ACT

[39] All children deserve to be a wanted and needed member of the family, in a loving, caring and stable environment. As I stated earlier, the Children's foster family have provided that environment for A.R. and S.R. They have recognized the needs of the Children, and I find they have done their best to cooperate with others who are and should be important in the Children's life, to maintain and foster the Children's relationship with them. I realize that the court cannot

determine or stipulate where or with whom the Children shall be placed, but I simply state that from the foster mother's testimony and from all the other material that has been filed, it certainly appears that the foster family that A.R. and S.R. have become a part of has been able to provide stability and love to the Children, to allow them to thrive.

[40] Upon considering and weighing all the evidence and the material that has been filed on this hearing, I find that M.M. has never shown any interest or intention in establishing a parent/child relationship with S.R.; A.R.'s father is not known at this time; and D.R. in consenting to the Director's application recognizes that a permanent custody order is in the best interests of her children, a difficult decision for her but clearly made out of love and only wanting what was best for her children.

[41] As I have found that the Children are in need of protection, and there is no realistic possibility that a supervision order would be appropriate, there is no other option but to grant the Director's application and place the Children in the permanent custody of the Director.

[42] Should both or either D.R. or M.M. take the necessary steps to establish an environment in which they could properly care for S.R. and A.R., then either parent may bring an application under s. 49 of the *Act* to discharge the permanent custody order. But to delay the permanency and security that the Children deserve is not in the best interests of the Children.

[43] Therefore, the Director's Application to have the Children placed in the permanent custody of the Director is granted. A.R. and S.R. will be placed in the permanent custody of the Director, under the following conditions:

1. The mother, D.R., shall have reasonable and generous access to the Children at the discretion of the Director, and as is in the best interests of the Children, until the Children are placed for adoption;
2. The father of S.R., M.M., shall have reasonable and generous access to S.R. at the discretion of the Director, and as is in the best interests of S.R., until S.R. is placed for adoption

[44] Should any of the parties require further clarification or modification of the conditions, the matter may be brought back before me, on notice to all other parties.

B.E. Schmaltz
Territorial Court Judge

Dated at the City of Yellowknife,
Northwest Territories, May 12, 2016

APPENDIX “A”

Child and Family Services Act, S.N.W.T. 1997, c. 13

Section 87:

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

a parent or foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family.

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