SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *J.T. v. M.W.*, 2017 NSSC 118

Date: 2017-05-02
Docket: *SFSNMCA* No. 91356
Registry: Sydney

Between:

JT

Applicant

v.

MW and AJT

Respondents

And

Date: 2017-05-02
Docket: *SFSNMCA* No. 91323
Registry: Sydney

Between:

AMT and CGT

Applicants

v.

MW and AJT

Respondents

Judge:	The Honourable Justice Theresa M. Forgeron
Heard:	October 16, 2016; March 16 and May 2, 2017, in Sydney, Nova Scotia
Oral Decision:	May 2, 2017
Written Release:	May 18, 2017
Counsel:	Shannon Mason, for the Applicants, JT, AMT and CGT Coline Morrow, for the Respondent, MW Jennifer MacDonald, for the Respondent AJT

By the Court:

Introduction

[1] This decision concerns the suspension of parental access because of the emotional, developmental and mental health needs of four children. Three of the children are diagnosed with post-traumatic stress disorder and one child is developmentally delayed. The children range in age from seven to eleven. The children's parents are MW and AJT. The children do not live with their parents; they live with relatives.

[2] The children experienced a difficult early life. They were exposed to significant protection risks while in the care of their parents. The parents were unable to provide the children with a safe, secure and stable home because the parents faced considerable challenges. Both the mother and father were diagnosed with untreated mental health illnesses. The mother attempted suicide on four occasions – once in the presence of the children. In addition, the father had addiction and anger issues. Because of these serious problems, the children were exposed to violence, chaos and dysfunction; they experienced chronic neglect. All of the children were traumatized because of their toxic childhood.

[3] Child protection authorities eventually became involved and attempted to work with the family. Services were unsuccessful. Although the mother and the father are no longer a couple, protection risks were neither eliminated nor reduced. A permanent care and custody order was avoided only because two acceptable family placements were found. The children's family placements were formalized by two court orders.

[4] In one order, two of the children, Ka and KJ, were placed in the custody of their paternal aunt, JT. The aunt is also the mother of ten year old twins. The aunt attends a community college. In 2016, the aunt had two heart attacks. The aunt and the four children in her care live with the paternal grandparents.

[5] In the second order, the other two children, Lo and CJ, were placed in the custody of their paternal uncle and aunt, CGT and AMT, who also have their own three children living with them. The aunt-in-law is a stay-at-home mom. The uncle is a continuing care assistant; he is also a nursing student.

[6] The two custody orders allow the mother and father to exercise supervised access. The mother was faithful in her attempts to visit the children. At times, the mother saw the children through the YMCA supervised access program, and at other times, exercised access within the community, with family or friends acting as supervisors. In contrast, the father had limited access. He is currently incarcerated, although he anticipates an early release. The father has a good relationship with the aunt and uncle; the mother does not.

[7] The parties were unable to agree as to what access orders were in the best interests of the children based on the children's changing needs. A contested hearing was held on October 16, 2016 and March 16, 2017. The following people testified: Dr. David Aldridge who is a child psychiatrist; Catherine Abraham-Currie who is a behavioural interventionist with the Intensive Community Based Treatment Team; Tammy McPhee-Doyle who is a clinical social worker with the ICBTT; the aunt-in-law; the uncle; the aunt; the father; the mother; and MB who is a paternal relative and who acted as a supervisor during some of the mother's visits.

[8] At the end of the March hearing, I granted an interim ruling which suspended supervised access, for both the mother and father, to all children except Ka. Parental access with Ka was approved through the YMCA supervised access program. We convened again on May 2, 2017 when the oral decision was rendered. A written decision was promised so that the parties would be able to review the reasons for my decision.

Issues

[9] The two issues which I must resolve in this decision are as follows:

- Should in-person parental access for the three children diagnosed with PTSD be suspended?
- What access provisions are in the best interests of the fourth child?

Analysis

[10] **Should in-person parental access for the three children diagnosed with PTSD be suspended?**

Position of the Parties

[11] One of the children, KJ, who is diagnosed with PTSD lives with the aunt. The aunt wants access suspended for KJ given Dr. Aldridge's expert opinion. The aunt is hopeful that once KJ completes the Zones Program, which deals with emotional regulation, it will be safe for access to resume.

[12] The other two children, Lo and CJ, live with the uncle and aunt-in-law. The uncle and aunt-in-law want access suspended given Dr. Aldridge's expert opinion.

[13] The mother agrees that access should be suspended for a short time; she does not agree with an indefinite suspension of access.

[14] The father says that he is willing to accept all access terms and conditions as set by the uncle and aunt. He says that he trusts their judgements and believes that they want what is best for his children.

Law

[15] All custody and access decisions must be based on the child's best interests. The factors which compose the best interests test are varied and are set out in s.18 of the ***Maintenance and Custody Act.*** The factors identified in s. 18 relate to the child's health, and to the child's educational, social, cultural, emotional and moral development, as well as to the ability of each parent to meet the needs of the child. Further, the court is directed to consider the issue of family violence and the impact that violence played on the child's development. I have considered these factors when making my decision.

[16] In addition, the following legal principles have emerged from case law, including the decisions of **Young v. Young**, [1993] 4 S.C.R. 3 (S.C.C.); **Abdo v. Abdo** (1993), 126 N.S.R. (2d) 1 (N.S. C.A.); **Bellefontaine v. Slawter**, 2012 NSCA 48 (N.S. C.A.); and **Doncaster v. Field**, 2014 NSCA 39 (N.S.C.A.):

- The burden of proof lies with the party who alleges that access should be denied or restricted, although proof of harm need not be shown. Proof of harm is but one factor to consider in the best interests test.

- The right of the child to know and to be exposed to the influence of each parent is subordinate in principle to the child's best interests.

- The best interests test is a positive and flexible legal test which encompasses a wide variety of factors, including the desirability of

maximizing contact between the child and each parent, provided such contact is in the child's best interests.

- The court must be slow to extinguish or restrict access. Examples where courts have extinguished access include cases where access would place the child at risk of physical or emotional harm, or where access was found to be contrary to the child's best interests.

- An order for supervised access is seldom seen as an indefinite or long term solution.

- Access is the right of the child; it is not the right of a parent.

- There are no cookie-cutter solutions. Courts must examine the unique needs of each child and craft an order that protects and enhances that child's best interests.

Decision

[17] I have determined, at this time, that it is in the best interests of KJ, Lo and CJ to suspend all in-person parental access.

[18] KJ, Lo and CJ are each diagnosed with PTSD. In-person parental contact is triggering the symptoms associated with PTSD in each of these children despite the fact that access visits have been, for the most part, a positive experience. For example, during access the children seek out their mother; the mother provides them with positive attention. The mother and children usually make arts and crafts or build puzzles; they cuddle and play; they have meals. From a cursory review, access appears to be working well.

[19] Despite these positives, however, in-person parental contact has caused serious emotional problems for the three children. I accept the evidence of Dr. Aldridge who was qualified to provide expert opinion evidence in the field of child psychiatry. At present, in-person parental contact produces disturbances which negatively interfere with the healthy emotional development of KJ, CJ and Lo.

[20] I accept Dr. Aldridge's statement that given their diagnosis, priority must attach to the stability of the children's long term placement. Cancelling access, even when it is going well, must occur to ensure the survival of these vulnerable and emotionally scarred children.

KJ

[21] Dr. Aldridge states that KJ's initial progress deteriorated because of in-person contact with her mother. KJ's symptoms include oppositional food refusal, forced vomiting, self-harming, self-blaming, lashing out and hurting others, violent mood swings, sleep disturbances, and refusing to separate from the aunt. At one point, KJ was hospitalized for dehydration and was given IV fluids. KJ can also be overly friendly with strangers.

[22] Dr. Aldridge recommends a suspension of access until KJ settles. He notes that the aunt has provided KJ with a safe place in which to express and vent her emotions without fear. The aunt has attended all of KJ's medical and therapeutic appointments. She has taken the Parent Connect course. She applies what she learned to her parenting. The aunt consistently acts in KJ's best interests. KJ is attending the Zone Program which teaches vulnerable children how to better regulate their feelings and behaviours. Dr. Aldridge hopes that once KJ settles, and learns better emotional regulation techniques, in-person parental access can resume.

CJ

[23] Dr. Aldridge states that CJ presents with persistent distress and anxiety behaviours indicative of PTSD. She engages in oppositional conduct and has attachment related behaviours such as rummaging, hoarding, and being overly friendly. She re-experiences trauma and makes up stories about being hurt when she is not. She lacks a sense of time and engaged in sexualized behaviours; she lacked modesty. She experiences significant sleep disturbance. Ms. Abraham-Currie observed one of CJ's extreme tantrums when she visited the home for a skills-building session. CJ was also prescribed medication for a time.

[24] CJ's negative behaviours have reduced considerably since she started living with the uncle and aunt-in-law. The uncle and aunt-in-law consistently ensure CJ attends all medical related appointments. They took the Parent Connect course and are present for all therapy sessions. They too apply what they learn to their everyday parenting. The uncle and aunt-in-law supply CJ with the consistent routine, safe parenting, and warm and loving care that CJ requires.

Lo

[25] Dr. Aldridge said that Lo too presents with extreme symptoms associated with PTSD, which are triggered when Lo visits with his mother. In January 2016, he was hospitalized because of a violent and uncontrolled outburst. Violent outbursts and anxiety became problematic once in-person contact with the mother resumed. Lo also engaged in over eating and hiding food, and had sleep disturbances. He was hypervigilant, easily distressed and prone to anger. One of Lo's intense reactions was observed by Ms. Abraham-Currie when she attended the home to provide skill building to Lo and the aunt-in-law.

Summary

[26] In summary, KJ, CJ and Lo are children who were traumatized because of the neglect they experienced and the violence they observed while living with the mother and father. Although the children have made progress in their new homes, they remain emotionally vulnerable. In-person contact with the mother, although on its face is positive, is nonetheless a trigger for each of these children. They begin to relive the trauma they experienced while in the care of their parents. Their healthy progress and healing becomes interrupted.

[27] In addition, I infer that the children will experience similar triggers if contact with their father resumes given that the father was also responsible for the toxic home life that caused the children to develop PTSD.

Resumption of In-Person Supervised Access

[28] I find that until the children stabilize and until their parents acquire more knowledge and better parenting skills, access will be suspended. Steps which must be successfully concluded before in-person parental supervised access is reinstated include the following:

- The parent seeking access must complete the Parent Connect Program. In the event either parent states that they are not eligible to attend this program, they must file a confirmatory letter from the director of the program, and successfully complete a comparable program suggested by the director.
- The parent seeking access must complete personal counselling to gain better insight into the emotional impact that violence and neglect has on children, and the steps that they can undertake to ensure the children's environment is safe, stable and loving.

- The parent seeking access must participate in at least ten skills building sessions with a member of the ICBTT.
- The parent seeking access must complete a parental capacity assessment.
- The father must supply proof that he no longer abuses drugs or alcohol and that he has successfully completed an anger management course.
- Each of the children must be settled in their new homes and sufficiently progressed in their treatment to be able to accommodate supervised in-person parental access.

Other Access Provisions

[29] Although I have suspended in-person contact, I nonetheless find that some communication remains in the best interests of KJ, CJ and Lo as follows:

- The mother and father may supply letters and gifts to each of the three children for all special occasions and holidays such as Christmas, Easter, Halloween, Grading Day and birthdays. The aunt, uncle and aunt-in-law will ensure that all letters and gifts are supplied to the children upon receipt.
- The aunt, uncle and aunt-in-law must supply each of the parents with updates of all important health, education, and social welfare particulars affecting the three children. Such communication will be sent via e-mail. Each parent will supply the child's caregiver with a current email address and any changes thereto.
- All communication must be child-focused and respectful.
- The aunt, uncle and aunt-in-law must supply each parent, by e-mail, photos of the children, to include individual photos every month.
- The aunt, uncle and aunt-in-law must, in a timely fashion, supply the parents with a copy of the report cards for each of the children.

[30] **What access provisions are in the best interests of the fourth child?**

Position of the Parties

[31] The fourth child is in the care of the aunt. The aunt agrees that supervised access is appropriate for Ka, although she disagrees with MB as the supervisor. The aunt states that she can supervise access provided her health is stable. The aunt also supports the uncle being designated as an access supervisor.

[32] The mother wants access to Ka. Although she agrees that the aunt and uncle can be designated as supervisors, she is nevertheless concerned about their availability. She wants MB to be a designated supervisor in the event the uncle and aunt are unavailable.

[33] For his part, the father states that his access should be at the aunt's discretion.

Decision

[34] I have determined that it is in Ka's best interests to have supervised access with the mother and father. Ka is the only child who does not have a PTSD diagnosis. Ka does, however, have special needs. He has a moderate intellectual disability. Ka is under the care of several professionals. The mother and father are encouraged to attend Ka's appointments, if they are available, to learn more about Ka's disabilities, to acquire skills to improve their parenting, and to be better able to meet Ka's unique needs.

[35] Until such time as the parties complete the counselling, therapy and education previously stipulated, the access will take place through the YMCA supervised access program. I have designated the YMCA program because it is a neutral setting and the program is staffed with trained access supervisors. Given this file's history, the YMCA program will be the most supportive. In addition, I prefer the YMCA program given the aunt's health difficulties, the uncle's hectic schedule, and MB's failure to fully appreciate the extent of the children's emotional health needs.

Conclusion

[36] This was a difficult decision because it involves the suspension of in-person access between the parents and three of their children. This suspension is necessary even though both parents have made lifestyle changes. For example, the mother's mental health has stabilized. She is not involved in an abusive relationship. She is permanently employed. She has the support of family and friends. She has made

tremendous progress. For his part, the father appears to be engaging in services that were available to him. He also has gained better insight into his problems.

[37] Unfortunately, these healthy lifestyle changes are not sufficient to allow in-person contact between the parents and KJ, CJ and Lo. In-person contact is not in their best interests given the children's fragile emotional needs. Priority must always be assigned to the children. It is for this reason that in-person parental contact is denied. Hopefully, as the children stabilize and the parents acquire more knowledge and better parenting skills, it will be safe to resume in-person access.

[38] Conversely, the parents can continue to have in-person supervised access with Ka because Ka does not have PTSD and the suspension of access is not in his best interests. Access will be supervised through the YMCA supervised access program.

[39] I want to thank all parties for participating and caring for these children. They need stability, structure and much love in order to heal.

[40] Ms. Mason is directed to draft and circulate the orders within ten days.

Forgeron, J.