SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *N.H. v. Nova Scotia (Community Services)*, 2017 NSSC 159

Date: 2017-06-09
Docket: SFH-CFSA 104294
Registry: Halifax

Between:

N.H.

Applicant

v.

Minister of Community Services and K.H.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Elizabeth Jollimore

Heard: May 29, 2017

Summary: Application by mother to terminate permanent care order regarding 13 year old daughter and ten year old son dismissed where termination of order not in the children's best interest. Mother unaware (and therefore unable to meet) the children's needs and delay in achieving permanence in the children's circumstances was contrary to the children's needs.

Key words: Permanent care and custody, application to terminate, best interests of the child, *Children and Family Services Act*

Legislation: *Children and Family Services Act*, S.N.S. 1990, c. 5

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Restriction on publication:

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 judgment 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."

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Heard:	May 29, 2017
Counsel:	Tanya R. Jones for N.H. Sarah Gordon for the Minister of Community Services K.H. not appearing and not represented

By the Court:

Introduction

[1] Thirteen-year old T and her ten-year old brother, J, have been in the permanent care of the Minister of Community Services for 19 months. Their mother, Ms. H, wants me to terminate the permanent care order: *Children and Family Services Act*, clause 48(1)(d). The Minister wants me to dismiss Ms. H's application so the children can be adopted. The children's father, KH, didn't take part in this application.

[2] I can only grant Ms. H's application if the circumstances have changed since October 2015 when the permanent care order was granted and it's in the children's best interests to terminate the permanent care order. Both requirements must be met: *Children and Family Services Act*, subsection 48(10).

[3] Here, the true issue is whether it's in the children's best interests to terminate the permanent care order because the circumstances have changed since the order was granted in October 2015.

[4] The concerns that led the Minister to take T and J into care were:

- Ms. H's mental health, including her anger and aggression
- Ms. H's alcohol abuse
- the children's exposure to, and involvement in, domestic violence, and
- the children's exposure to Ms. H's partner, RR, who was earlier convicted of sexually assaulting a 5-year old girl and charged with assaulting T.

[5] These circumstances have changed.

[6] Ms. H is prescribed medication for her mental health. In addition to taking her medication, she participated in counselling at the Bayers Road Mental Health Clinic in late 2015 and early 2016. Her counselling ended when she completed the maximum number of sessions available to her. Ms. H has recently arranged counselling at her local hospital which will begin next month.

[7] Since October 2015, Ms. H's only angry outburst occurred in June 2016. She thought the children would be returned to her. They weren't. The children were awaiting assignment of a new worker. There was no one to answer Ms. H's questions about why the children were still in foster care. Her outburst was inappropriate. Anyone would be frustrated in the circumstances: the children hadn't been returned and it seemed that no one at the Department was paying attention.

[8] Ms. H is sober and said she "can't stand" alcohol.

[9] Ms. H ended her relationship with RR in March 2015.

[10] Ms. H is in a new relationship. She and her partner, HR, have known each other for many years and have cohabited for nine months. Mr. R is also sober and has not had anything to drink in the past three years. He has criminal convictions, but none is more recent than six or seven years ago.

[11] There is no domestic violence in the relationship between Ms. H and Mr. R. Mr. R has attended Ms. H's visits with the children. The visits are supervised. There have been no reports of conflict, anger or aggression at the visits.

[12] There are many positive changes in Ms. H's life. These changes are to her credit. For all these positive changes in Ms. H's life, an application to terminate a permanent care order can only be granted if it's in the children's best interests to do so: *Nova Scotia (Minister of Community Services) v. DLC*, 1997 CanLII 14530 (NSCA) at paragraph 17.

Is it in the children's best interests to terminate the permanent care order?

[13] Ms. H has the burden of proving that it's in the children's best interests to terminate the permanent care order: *MD v. Children's Aid Society of Halifax*, 1994 CanLII 8807 (NSCA) at paragraph 71.

[14] Considerations relevant to children's best interests are listed in subsection 3(2) of the *Act*. One aspect of the considerations is the children's circumstances: their physical, mental and emotional needs and their level of physical, mental and emotional development. Another aspect relates to the proposed plan. What is the impact on the children of disrupting the continuity of their care? What is the effect of any delay? What is the risk of harm associated with each plan?

[15] I conclude that it is not in the children's best interests to terminate the permanent care order. I reach this conclusion for two reasons. First, I am not persuaded that Ms. H can meet the children's significant needs. Second, Ms. H has not shown that returning the children to her, outright or under supervision, is in the children's best interests having regard to the children's needs.

Ms. H's ability to meet the children's needs

[16] T and J have significant needs and Ms. H has not shown that she can meet them.

[17] Both children began therapy during the child protection case. That case began in 2013 and ended in 2015. Before me, each counsellor was qualified, by agreement, to offer opinion evidence as an expert in child therapy and the treatment of trauma in children. J's counsellor, Ms. Lamb, was additionally qualified to offer opinion evidence as an expert in child attachment.

[18] T, the thirteen year old girl, took part in a psychoeducational assessment during the child protection case. According to Kendra Mountain, the social worker assigned to the children since June 2016, T "struggled academically, appeared parentified in relation to J, and also experienced soiling, hiding of soiled clothing and hoarding." Ms. Mountain also reported:

> T is now completing Grade 7 in French Immersion, and has adaptations for organizational strategies and environmental strategies, as a result of recommendations from her psychoeducational assessment. She attends a group tutoring program in the community two days per week for assistance with all subjects. There have been times when she has regressed with personal hygiene, requiring daily prompts and a structured hygiene routine.

[19] Michael Belgrave is T's counsellor. Mr. Belgrave said that it "will be important" for someone parenting T to have "expertise in supporting young persons with complex trauma and attachment injury histories". He anticipated that moving T from her foster placement "will be a significant disruption and maybe a further attachment injury".

[20] J will turn eleven in less than two months. Sara Lamb has been his counsellor for three years. Initially, J formed no social relationships with anyone: he had no friends. Now, J identifies friends at school, and plays with children in his neighbourhood. Ms. Lamb said that J has significant learning challenges and delays. J struggles with reading, social interaction and attention. While J has not disclosed a great deal to Ms. Lamb, J has witnessed and experienced violence.

[21] In the past, J has demonstrated disturbing behaviour: he soiled himself and would hide his clothing. He would wet his bed at night. He hoarded food, and stole food and small objects.

[22] Ms. Lamb explained that J's attachment difficulties could stem from experiencing multiple moves, being in care, being afraid, and seeing violence. She said that J's demeanor included being frozen or shutting down, being timid or tentative. She explained that trauma results in fear or being withdrawn.

[23] Since being told that he is to be adopted, J has not regressed to his earlier behaviours, but he has had outbursts, anger and "nastiness" in his foster home.

[24] J has been accepted into the IWK's intensive day treatment program. Ms. Lamb reports that J "still needs support and skill development around self-expression, and understanding emotions, ability to engage socially with peers, as well as handling his learning challenges." The IWK program is intended to assist J "emotionally, socially and intellectually."

[25] T and J have significant needs relating to their mental and emotional health.

[26] Ms. H testified that she would do anything for the children. She testified she was unaware of any particular needs the children had. She said she had "no idea" what help J currently needed, and said the children "were fine", and had no special needs while in her care. She does not understand how to meet the children's needs. For example, Ms. H said that French Immersion was available for T at the school T would attend if she was returned to Ms. H. However, she offered no information that the adaptations at T's current school or the weekly tutoring group would be available to T.

[27] Ms. H cannot hope to meet the children's needs because she doesn't know what they are.

The children's needs and the proposed plan

[28] The Minister plans for the children to be adopted after a "slow transition". The children were told about the adoption in January 2017. They had a final visit with Ms. H and Mr. R in February 2017. They have met their prospective adoptive parents a few times: first, at the foster parents' home and, then, at the adoptive parents' home. If I dismiss Ms. H's application, the children will move to the adoptive home at the end of June, when school ends. This plan was formulated on the basis of the children's history of attachment and trauma.

[29] T and J have experienced disruptions in their home, parenting and care. As a result, they need certainty in their relationships. They need to know what will happen. They are less able to cope with uncertainty, change and disruption than other children. Their behaviour can regress when there is uncertainty, change and disruption.

[30] The arrangement which provides greater continuity for the children is proceeding with the planned adoption. The children have been prepared for this and the transition has begun. In contrast, returning them to Ms. H is a step for which the children are not prepared. They have been told that their visits with her are over and they have had a final visit with her and Mr. R. They understand what is happening and have begun to adjust.

[31] Ms. H proposes that if the children are not returned to her outright, that this proceeding be adjourned for six months and the children placed with her during that period. This would allow a trial period when the Minister could monitor the children.

[32] I reject the adjournment option. It is not in the best interests of T and J that the prospect of permanence be delayed. They have been in foster care and seeing counsellors for years. Uncertainty is problematic for them. An adjournment forces six more months of uncertainty upon them.

[33] In an application to terminate permanent care, it is difficult to assess the risk of harm associated with each plan. The Minister's plan is presented in the abstract – I do not have evidence about the prospective adoptive parents to compare with Ms. H's plan. I can only compare Ms. H's plan against what I know of the children's circumstances and their best interests.

[34] Ms. H's plan does not recognize the children's attachment trauma. A plan which does not clearly continue the supports the children have is detrimental to the children, given their attachment trauma.

[35] I conclude that it is not in the children's best interests to terminate the permanent care order.

Conclusion

[36] I dismiss Ms. H's application to terminate the permanent care and custody order.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia