

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Nova Scotia (Community Services) v. D.M.*, 2017 NSSC 161

Date: 2017-06-12

Docket: SFH-CFSA 10580

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

D.M.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Elizabeth Jollimore

Heard: June 5, 2017

Summary: Application by Minister to terminate permanent care order regarding 17 year old dismissed. Minister failed to prove change since permanent care order was granted in 2009 and that termination was in the child's best interests. In such applications, Minister should make child aware of effect of termination, how and why it would happen, identify the child's right to participate and assist the child in exercising that right.

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, section 48

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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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Counsel: Samantha Parras for the Minister of Community Services
D.M. not appearing and not represented

By the Court:

This application

[1] The Minister of Community Services asks me to terminate the order placing DM in its permanent care: *Children and Family Services Act*, clause 48(1)(d).

[2] DM is seventeen. The order placing DM in the Minister's permanent care was granted in 2009, when DM was nine years old.

[3] I can only grant the application if the circumstances have changed since July 2009 when the permanent care order was granted and it's in DM's best interests to terminate the permanent care order: *Children and Family Services Act*, subsection 48(10).

[4] The Minister's evidence was offered in the affidavit of DM's case worker. This told me nothing of the circumstances which resulted in DM's permanent care. I do not know whether his parents or guardians were somehow deficient in their ability to care for him or if DM had needs which could not be met by his parents or guardians.

[5] I must know why DM was made the subject of a permanent care order so I can determine if the change the Minister alleges is "significant, relevant and a positive benefit for [DM] to result in a termination order": *M.D. v. Children's Aid Society of Halifax*, 1994 CanLII 8774 (NSCA) at paragraph 61.

[6] There is no evidence before me to prove that it's in DM's best interests to terminate the permanent care order. The Minister's evidence doesn't address the requirements of clause 48(10)(b) of the *Act* at all.

[7] I dismiss the Minister's application.

Future applications to terminate DM's permanent care

[8] DM was served with copies of the Minister's Notice of Application, the supporting affidavit and the letter which accompanied these documents when they were filed at the court.

[9] According to the affidavit from DM's caseworker, the caseworker told DM three times that if DM remained in his current home, the Minister would apply to terminate the permanent care order.

[10] In October 2016, the caseworker wrote to DM: "You have been residing with [. . .] since 13th May 2016. If it is your intention to remain, it only makes sense for [. . .] to assume legal custody and full financial responsibility of you." This letter may have left DM with the understanding that there was no basis on which he could oppose the Minister's application.

[11] The documents DM was given contained no description of the effect of an order terminating the permanent care order. There was no suggestion that DM consult with a lawyer. There was no information about how DM would go about consulting with a lawyer.

[12] The preamble to the *Children and Family Services Act* notes that children have basic rights and fundamental freedoms and “a right to special safeguards and assistance in the preservation of those rights and freedoms”, and that they are “entitled to the extent they are capable of understanding, to be informed of their rights and freedoms, to be heard in the course of and to participate in the processes that lead to decisions that affect them”. As a child in care who is under the age of 19, I find that these statements apply to DM.

[13] It contravenes the preamble to seek to terminate DM’s permanent care without providing DM with an explanation of what this means, how and why it would happen, identifying DM’s right to participate, and assisting DM in exercising that right.

[14] If the Minister intends to file another application to terminate DM’s permanent care order, the Minister must provide DM with notice and assist DM in consulting with counsel. This may require the Minister to assist DM in applying for representation at Nova Scotia Legal Aid and providing transportation to and from legal appointments and court appearances.

Conclusion

[15] I dismiss the Minister’s application to terminate the permanent care and custody order. A copy of this decision and order must be personally served on DM and an affidavit of service filed.

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

Halifax, Nova Scotia