

FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v. J.J., 2018 NSFC 1

Date: 2018-01-10

Docket: FKCFSA-103293

Registry: Kentville, N.S.

Between:

MINISTER OF COMMUNITY SERVICES

Applicant

v.

J.J. and M.L.

Respondents

Restriction on Publication: 94(1) of the *Children and Family Services Act*,
S.M.S. 1990, c. 5.

Judge: The Honourable Judge Jean Dewolfé

Heard: October 26, 2017, in Kentville, Nova Scotia

Decision: January 10, 2018

Counsel: Angela Swantee, for the Applicant
Cheri Killam, for the Respondent, J.J.
Brock Beazley, for the Respondent, M.L.

By the Court:

INTRODUCTION

[1] This is an application by the Minister of Community Services (“the Minister”) for an order placing two children, A. (age 8) and J. (age 3 ½) in permanent care pursuant to the *Children and Family Services Act* (“The Act”). J.J. is the children’s mother. M.L. is J.’s father. A.’s father took no part in the proceeding and is not involved in A.’s life.

[2] J.J. is the mother of three other children. Her two oldest daughters have been placed in permanent care in prior proceedings. S., age 5, was initially part of this proceeding, but was placed in the care of her father, S.G., in December 2016, and this proceeding was terminated with respect to her in February 2017.

[3] M.L. has two older children who reside in P.E.I. with their mother.

[4] J.J. seeks the return of A. and J. to her care. M. L. seeks custody of his son, J.

BACKGROUND

2002-2012

[5] This is the third child protection proceeding involving A., the second with respect to J. The historical child protection concerns with respect to J.J. include exposing her oldest daughter to a convicted sex offender, the child's father (2002); exposing the children to domestic violence between J.J. and A.'s father, Mr. W.; concerns regarding Mr. W.'s alcohol abuse and criminal activities (2010-2011); and concerns regarding feeding and care and supervision, (2010-2011). J.J. engaged in services and separated from Mr. W. during 2011-2012; those proceedings terminated in September 2012.

2013-2015

[6] In July 2013, A. and S. were taken into care and another protection proceeding was commenced. The primary concerns were J.J.'s ability to maintain an appropriate home, supervision and care. J.J. had allowed Mr. W. to have unsupervised access with A. and a new boyfriend was reported to have sexually abused A. Concerns existed with respect to adequate feeding and weight gain by S., and J.J. yelling at the children, being unable to maintain her home and not

administering medication properly. J.J. engaged in services, and A. and S. were returned to her in September 2014.

[7] During this proceeding, J.J. commenced a relationship with M.L. (2013). In February 2014, Psychologist, Deborah Pick, recommended a gradual reintroduction of A. and S. to J.J.'s care. J. was born in April 2014. J. was taken into care when he was four days old, but was placed with his parents under supervision shortly thereafter. The parties engaged in services and seemed to be making progress. Therefore, the supervision order for all three children was terminated in February 2015.

Current Proceeding – 2016 to Present

[8] The Minister received referrals with respect to the family, commencing again in September 2016, with respect to yelling and fighting in the home, and inadequate care and behavioural issues with respect to the children.

[9] On November 24, 2016 this proceeding began, following the removal of the three children from J.J.'s care. The child, S., went to live with her father, S.G, in December 2016.

[10] Interim orders were made on November 28, 2016 and December 14, 2016, placing the children, A. and J., in temporary care. A protection finding was made on February 15, 2017, pursuant to s. 22(2)(g) of the **Act**.

[11] The Minister filed a Plan of Care dated March 21, 2017, seeking permanent care and custody of A. and J. The Disposition Order dated April 11, 2017, renewed on June 6, 2017 and August 8, 2017 maintained the temporary care, with supervised access to the parents.

ISSUE

[12] The outside statutory timeline for A. expired on October 11, 2017. The parties agreed to extend the timeline to October 26, 2017, when the matter was heard.

[13] The statutory timeline for J. will expire on April 11, 2018.

[14] Therefore, this Court has only two options with respect to A., i.e., return her to her parents' care or place her in permanent care. With respect to J., the Court also the option of continuing temporary care.

MINISTER'S EVIDENCE

[15] Pursuant to s. 96(2) of the **Act**, the Minister submitted pleadings, reports and documents filed in previous child protection proceedings which commenced in 2011 and 2013 with respect to J.J. and in 2014 involving J.J. and M. L. These were admitted by consent.

[16] The affidavits of S.G. (S.'s father) and Debra Reimer were also admitted by consent.

[17] **Ms. Reimer**, a social worker, detailed her history with J.J. and the programs J.J. had accessed through the Kids Action Program in Canning, Nova Scotia. She indicated that she supported the return of the children to J.J.'s care.

[18] **S.G.** reported that his daughter, S., enjoys her time with her mother, J.J., and her mother's other children. He indicates he is willing to support and supervise J.J.'s visits with S. in the future.

[19] The reports of psychologists, **Monique Simonse** and **Lisa Hayden**, with respect to A. were admitted by consent. These reports identify the significant obstacles faced by A. in terms of learning and attention, which appear to be related possibly to ADHD, attachment issues and complicated and/or caused by childhood instability and poor parenting. Ms. Hayden conducted a psychoeducational

assessment and recommended occupational therapy, speech therapy and trauma therapy for A.

[20] **Dr. Stephanie Aubrey**, pediatrician, was qualified as an expert in diagnosing and treating children. She filed reports with respect to both children. She also testified and was cross examined. With respect to A., she identified behavioural issues, academic challenges and toileting concerns. She diagnosed A. with ADHD, and described how so far, medication has not been effective. She noted that A. would need to be monitored and emphasized the need for structure and routine, regardless of whether her symptoms were as a result of ADHD or exposure to trauma.

[21] Dr. Aubrey also saw J. with respect to bowel issues and reported on his treatment and progress.

[22] **Andrea Munro**, family therapist, was qualified as an expert in the area of individual, couple, and family counselling. She is employed primarily by the Minister to provide therapy to clients. She provided counselling to J.J. between February to June 2017, to assist her in gaining insight into how her parenting had contributed to A's behavioural concerns. She suggested that J.J. felt anxious and overwhelmed and admitted yelling at the children (but attributed this to hearing

loss). Ms. Munro expressed her opinion that unless J.J. dealt with her anxiety, “her ability to self regulate will likely continue to be compromised”. J.J. also told Ms. Munro of her experiences with M. L’s anger. Ms. Munro recommended that J.J. follow up with Mental Health regarding her anxiety. She also indicated that while J.J. had some awareness of the impact of her behaviours on the children, she appears to not have put this into practice during access visits.

[23] **Stephen Gouthro**, psychologist, was qualified as an expert in treating and assessing mental health issues, including anger and impulse control. He provided therapy to M.L. on eight occasions between October 2016 and June 2017. He reported that M.L. acknowledged angry outbursts in the family home, including raising his voice and punching holes in walls. Mr. Gouthro reported that M.L. made slow progress. He noted that M.L. did not want counselling and exhibited defensiveness and resistance. However, he was of the opinion that M.L. was committed to his son, J.

[24] **Lael Aucoin**, the long term social worker for the family, provided five affidavits, testified, and was cross examined. Her initial affidavit recited the history of the parties’ respective involvement with the Minister. Subsequent affidavits provided a chronology of the parties’ involvement with her, other

employees of the Minister and service providers, as well as reports on the children's circumstances.

[25] Ms. Aucoin summarized the Minister's concerns with respect to J.J.'s inability to maintain an adequate home environment, or to attain any real insight into how her behaviours continued to impact negatively on the children, despite over eight years of Agency involvement, and completion of many services.

[26] Ms. Aucoin recounted that despite being provided with a dumpster in March 2016, J.J.'s home was once again unfit for the children by November 2016.

[27] Ms. Aucoin noted that J.J. was confrontational and resistant to cues and suggestions during supervised access. She often became frustrated, especially with A.'s behaviours and was unable to manage the children's behaviours. Ms. Aucoin described an access visit in July 2017 at J.J.'s home with A., J. and S. which was not successful. Thereafter, access visits did not occur in J.J.'s home.

[28] Ms. Aucoin also described interactions between M.L. and Agency employees including herself. Their attempts to communicate with him were often met by frustration, anger, and on several occasions, threats. Ms. Aucoin also related information as to a recent assault charge on a neighbour by M.L. She described concerns with access to J., including an incident in which M.L. was

reported to have slapped J. and yelled at him in August 2017. After this incident, she asked to speak with M.L. to address his conduct. This request was met with aggression, posturing and denials, and as a result, access was suspended.

[29] Ms. Aucoin also reported M.L.'s comments about his counselling and anger which demonstrated a lack of insight and no recognition as to the need to change. He voiced his opinion that he did not have an anger issue because he had not hit anyone in two years. He insisted that he did not need to learn parenting skills because it was J.'s responsibility to listen to him

[30] **Catherine Callaghan** was the child in care worker for the children. She provided an affidavit, testified and was cross examined.

[31] She described J. and A. as very defiant. Both had toileting issues and A., in particular, had temper tantrums. Attempts to medicate A. for ADHD had not been successful. However, A. had made improvements at school.

[32] **Jason Nauss**, employed by the Minister as a family and youth worker, worked with J.J. from September 2016 to November 2016 and December 2016 to May 2017. He noted that J.J. completed a number of different units, and that she had worked with family support workers in the past. He noted J.J.'s comments that she did not feel she needed family support, her attempts to blame others and her

failure to recognize her own involvement in situations. He described her initially as manipulative and argumentative. Mr. Nauss supervised a number of access visits between J.J. and the children between March to May 2017, and noted numerous examples of J.J.'s difficulties in managing the children's behaviours and emotions.

[33] Mr. Nauss also worked with M.L. between January to June 2017. He described conversations with M.L. in which M.L. appeared to have unrealistic expectations of J., e.g. that he can take care of himself. He also had trouble with the concept of routine for J. He described M.L.'s struggle throughout his meetings to maintain his composure and control his anger and frustration. This resulted in threats against Agency personnel in May 2017. Mr. Nauss noted that M.L. learned a great deal in family support (despite M.L.'s position that he did not have anything to learn), but his continued anger and lack of impulse control remained a serious concern.

[34] Mr. Nauss was present when M.L. made threats towards the supervisor and Ms. Aucoin

RESPONDENTS' EVIDENCE

[35] **J.J.** filed an affidavit, testified and was cross examined. She placed much of the blame for the children's behaviour and the condition of the home on M.L. with whom she indicated she is no longer in a relationship. She reiterated that she has a loud voice and does not yell at her children and dismissed the services provided to her as inappropriate and unnecessary. She has still not followed Ms. Munro's recommendation to address her anxiety.

LAW

[36] The law in this matter is pursuant to the **Act** prior to its recent amendments.

[37] The Court is required to make a disposition that is in the child's "best interest": s.42(1). The factors which the Court must address in reaching this determination are set out in s. 3(2):

Where a person is directed pursuant to this Act except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

- (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of the family;**
- (b) the child's relationships with relatives;**
- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;**
- (d) the bonding that exists between the child and the child's parent or guardian;**

- (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;
- (h) the religious faith, if any, in which the child is being raised;
- (i) the merits of a plan for the child's care proposed by an agency, including proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- (j) the child's views and wishes, if they can be reasonably ascertained;
- (k) the effect on the child of delay in the disposition of the care;
- (l) the risk that the child may suffer harm through being removed, kept away from, returned to or allowed to remain in the care of a parent or guardian;
- (m) the degree of risk, if any, that justified the finding that the child is in need of protective services;
- (n) any other relevant circumstance.

S. 42(2) provides:

The court shall not make an order removing the child from the care of a parent or guardian unless the Court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

- (a) have been attempted and failed;
- (b) have been refused by the parent or guardian; or
- (c) would be inadequate to protect the child.

S. 42(3) states that:

Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before asking an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

S. 42(4) provides that:

The Court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably unforeseeable time not exceeding the maximum time limits based on the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c.5, s42.

[38] The Minister must prove on a balance of probabilities that there continues to be a substantial risk that the children will suffer harm pursuant to Section 22(2) of the **Act**.

[39] The test which must be applied is not whether other plans for the child will provide the best parenting, but rather whether the parents can provide “good enough” parenting without subjecting the children to a substantial risk of harm.

ANALYSIS

[40] The Respondent, J.J., is the mother of two young children. M.L. is the father of one young child. These children have been exposed to a great deal of conflict and have not been adequately cared for while in the Respondents’ care.

[41] The evidence before the Court is that these Respondents have made virtually no progress in addressing their mental health issues. For J.J. this centers around her anxiety. For M.L., his anger continues to be a significant issue in his relationships and his outlook on life.

[42] Neither parent has exhibited any real insight into how their conflict and dysfunctional behaviours have negatively impacted the children. Therefore, no improvement has occurred.

[43] While M.L. loves J. and generally interacts with him with affection, M.L.'s reaction to the criticism of his actions during his August access with J., and his comments as to his expectations for a three year old child, clearly demonstrate a continuing lack of understanding as to the needs of his child, and an inability to control his emotions so as to put his child first.

[44] J.J. has repeatedly exposed A. to harmful situations and neglected the needs of both children. Her parenting style is ineffective and emotionally harmful, and she continues to have no insight into how her behaviour has negatively affected her children.

[45] I find, on a balance of probabilities, that both A. and J. would be at substantial risk of emotional and physical harm from the Respondents' neglect, conflict and poor parenting if they were returned to the care of either J.J. or M.L. Nothing has changed since these children were found to be in need of protective services and they continue to be in need of protective services.

[46] I find that the Minister has provided reasonable services to the Respondents, whose participation and progress has been minimal. These services have not alleviated the protection concerns. I note that with respect to J.J., the most recent services are the last in a long list of services provided to her since 2002.

[47] No family placements have come forward. No special circumstances as set out in the **Act** exist with respect to access.

[48] I therefore accept the Minister's plan for permanent care, without access, to be in the best interest of the children.

[49] I find that even though the statutory timeline with respect to J. has not expired, M.L. and J.J. would not be able to meet the protection concerns for J. within these timelines. J. needs stability and it is not in his best interests to delay finding a permanent home for him, ideally with A.

[50] Therefore, both children shall be placed in the permanent care of the Minister without access to the Respondents.

Jean Dewolfe, JFC