NOVA SCOTIA COURT OF APPEAL

Citation: *G.R. v. Nova Scotia (Community Services)*, 2019 NSCA 49

Date: 20190530
Docket: CA 485667
Registry: Halifax

Between:

G.R.

Appellant

v.

Minister of Community Services and K.C.

Respondents

Restriction on Publication: s. 94(1) of the *Children and Family Services Act*

Judge:	The Honourable Justice Cindy A. Bourgeois
Appeal Heard:	May 30, 2019, in Halifax, Nova Scotia
Subject:	Children in need of protective services; Permanent care and custody
Summary:	By orders issued January 24, 2019, a hearing judge placed four children in the permanent care and custody of the Minister of Community Services. Their mother, G.R., appealed to this Court and sought to have the children returned to her care and custody. Their father, K.C., did not participate in the appeal. G.R.'s argument focussed solely on the evidence of a court-appointed expert who had undertaken a Parental Capacity Assessment, and later testified at the hearing. In the report, the expert wrote "There is little evidence that Ms. R. would present a risk to the children [when] she is not in a relationship with an anti-social partner."

During his *viva voce* evidence, the court expert was not prepared to opine that G.R. did not pose a substantial risk of harm to her children. His *viva voce* evidence expanded upon and clarified the opinion expressed in the Parental Capacity Assessment.

On appeal, G.R. argued the hearing judge erred by failing to accept the expert's initial written opinion.

Issues: (1) In concluding the children remained in need of protective services at the end of the timeframe for all disposition orders, did the hearing judge make an error of law, or a palpable and overriding error of fact?

Result: G.R. was unable to demonstrate an error of law or palpable and overriding error of fact on the part of the hearing judge. She asks this Court to re-weigh the evidence that was before the hearing judge and reach a different conclusion. That is not the role of an appellate court.

The hearing judge was entitled to accept some, all, or none of the evidence presented by the court-appointed expert. There was ample evidence to support the hearing judge's conclusion.

Appeal dismissed without costs.

NOVA SCOTIA COURT OF APPEAL

Citation: *G.R. v. Nova Scotia (Community Services)*, 2019 NSCA 49

Date: 20190530
Docket: CA 485667
Registry: Halifax

Between:

G.R.

Appellant

v.

Minister of Community Services and K.C.

Respondents

Restriction on Publication: s. 94(1) of the *Children and Family Services Act*

Judges:	Wood, C.J.N.S., Bryson and Bourgeois, JJ.A.
Appeal Heard:	May 30, 2019, in Halifax, Nova Scotia
Written Release:	June 7, 2019
Held:	Appeal dismissed without costs, per reasons for judgment of Bourgeois, J.A.; Wood, C.J.N.S. and Bryson, J.A. concurring
Counsel:	Alan Stanwick, for the appellant Danielle Morrison, for the respondent Minister K.C., not appearing

Restriction on publication pursuant to s. 94(1) *Children and Family Services Act*, S.N.S. 1990, c. 5.

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:

> 94(1) 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 a relative of the child.

Reasons for judgment:

[1] By orders issued January 24, 2019, Justice Kenneth C. Haley placed four children in the permanent care and custody of the Minister of Community Services (the "Minister"). Their mother, G.R., appeals to this Court and seeks to have the children returned to her care and custody. Their father, K.C., did not participate in the appeal.

[2] After having heard from the parties, the Court advised the appeal was dismissed, promising written reasons to follow. These are our reasons.

Background

[3] G.R. and K.C. have an extensive history of involvement with the Minister. It would be a substantial undertaking to canvass the background of the couple's involvement with child protection authorities and previous court proceedings. I will provide only the background necessary to put the present matter in context.

[4] G.R. has given birth to 10 children. None are presently in her care. The children who are the subjects of this appeal (M. born July *, 2012; G. born August *, 2014 and twins K. and I. born June *, 2016) are her 6th, 7th, 8th and 9th children. Her older five children have all been permanently removed from her care pursuant to proceedings taken under the *Children and Family Services Act*, S.N.S. 1990, c. 5 ("the *Act*"). G.R. gave birth to her 10th child after the commencement of the proceedings giving rise to this appeal. W., born July *, 2018, was taken into care at birth and is the subject of a separate child protection application.

[5] As noted earlier, the Minister has had longstanding involvement with G.R., as well as the father of the children, K.C. The record demonstrates that both in the present proceeding, and those taken in the past, the Minister raised concerns about the existence of significant and persistent domestic violence between G.R. and K.C., as well as concerns regarding substance abuse and neglect of the children.

[6] The proceeding respecting these four children was commenced in March 2017. It was triggered by a referral received by the Minister in February 2017, which reported G.R. had left Cape Breton with her four young children and was residing with her father W.R. in Halifax. It was undisputed that W.R. is a convicted child sex offender. Further, G.R. had acknowledged to the Minister that her father had sexually abused her and her sister as children. Shortly after that referral was received, G.R. returned to Cape Breton where she was found living in

a home with no heat, with no beds for the children, and in unsanitary conditions. The children were taken into care.

[7] Following a contested protection hearing spanning eight days, the hearing judge found the four children to be in need of protective services. Specifically, pursuant to s. 22(2)(b) of the *Act*, it was determined the children would be at substantial risk of harm should they return to the care of G.R. or K.C. The protection finding was made July 19, 2017 with the resulting order being issued September 15, 2017.

[8] The protection order directed that G.R. and K.C. were to have "absolutely no contact with one another, direct or indirect"; they were to participate in a parental capacity assessment, and G.R was to "cooperate and comply with reasonable requests" made of her by the Minister. The findings of the hearing judge as incorporated into the order were not appealed.

[9] The matter returned to court for the initial disposition hearing on October 16, 2017. At that time, the hearing judge found that the four children remained in need of protective services. He ordered they remain in the temporary care of the Minister. The resulting disposition order repeated the direction that G.R. and K.C. were to have no contact and provided for more specific direction regarding services. In particular, G.R. was ordered to:

- engage with the Cape Breton Transition House;
- engage in drug and alcohol testing through random urinalysis;
- engage with enhanced home visiting; and
- engage with the Family Place Resource Center.

[10] The record demonstrates that the specific conditions were imposed at the request of the Minister. They were not opposed by G.R. or K.C. No appeal was brought in relation to that order. It does not appear from the record that those directions were varied prior to the final review hearing.

[11] The final hearing was held over five non-consecutive days, commencing September 4, and concluding on October 18, 2018. K.C did not participate. At the conclusion, the hearing judge found that G.R. had refused to participate in services required to address the risk of substantial harm to the children. He found that G.R. continued to engage in a relationship with K.C. The hearing judge concluded the children remained in need of protective services and, given that the statutory

deadline for all disposition orders had come to an end, he had only one option – issue an order for permanent care and custody.

[12] With respect to G.R.'s failure to undertake services as ordered, the hearing judge noted:

> [65] G.R. stipulated under oath at the Protection Hearing that she would cooperate with the Minister's plan and complete services. …
>
> [66] This Court subsequently concluded at the Protection Hearing as follows:
>
> > The Court nonetheless finds that further and additional services are required under the mandate of the Minister to address risk.
> >
> > And further:
> >
> > … Ms. R. cannot be trusted to follow through with her commitments, the court, nonetheless, believes Ms. R. should have the opportunity to prove she can be trusted as a mother, <u>but she must commit to the process for the return of the children to be an option</u> (emphasis added). Ms. R. must accept services that are offered and also cooperate with the Minister's Plan of Care. She must become less combative and less judgmental of the players and the process.
>
> [67] It is the opinion of the Court that G.R. has failed to commit to the undertaking she made to this Court. G.R. has done so at her peril, and has severely disadvantaged her bid to have the children returned to her care because of her entrenched and combative attitude.

[13] The hearing judge further found K.C. was not only the father of the four children who were subject to the proceedings, but also of G.R.'s 10th child, born July *, 2018. Clearly, that would place G.R. in contravention of the "no contact" provision first directed by the court in July 2017. The hearing judge expressed concern with G.R.'s testimony that she was unaware of the identity of the new child's father. He wrote:

> [69] G.R. has accepted that introducing her children to her father was a mistake and confirmed it would not happen again; but she still remains illusive regarding who the father of W. is, and has testified she did not know who the father is. This perplexing and evasive behavior is not new. G.R. has withheld this type of information before. It, thus, continues to be of great concern to the Court when assessing G.R.'s commitment to have the children returned to her care.
>
> [70] The Court fails to understand what advantage G.R. hopes to gain by lying about her pregnancy and failure to disclose who is the baby's father. This speaks to Dr. Landry's evidence where he stated G.R. is "not in touch with how poorly she is functioning"; that "she can create irrational creation of fact in her mind".

[71] Dr. Landry testified at page 17 of his report:

> There is very little evidence that G.R. would present a risk to the children when she is not in a relationship with an anti-social partner.

[72] Justice O'Neil concluded at page 160, line 16 of Exhibit 1 (2014 permanent care hearing).

> I am satisfied that a substantial risk of harm to this child would exist if the parents are together.

[73] Justice Forgeron concluded in 2011 at paragraph 27 of her decision (Protection – Exhibit 2, Tab B, page 5):

> (a) G.R. lacks meaningful insight into the serious problems associated with violent relationships. G.R., despite past services, continues to minimize the abusive nature of the relationship which she had, and likely will have; with K.C. (emphasis added) … Given this lack of insight, M.E. remains at substantial risk of physical harm while in the care of her mother.
>
> (b) G.R.'s assertion that she and K.C. are no longer a couple after parting company in December 2010 is not credible, given G.R.'s past history, her lack of insight into domestic violence, her attempts to minimize the past violence and protect K.C. while giving evidence. G.R. continues to be heavily invested in her relationship with K.C., and will in all likelihood, resume the relationship in the future… (emphasis added)
>
> (c) G.R. lacks meaningful insight into the nature of the protection concerns. G.R. was unable to identify the changes that she had made in her lifestyle to ensure a safe environment for M.E. G.R. cannot make lasting lifestyle changes when she does not even recognize her problems.
>
> This is underscored by G.R.'s testimony that she didn't need the anger management course, and is only taking the course to "show I did it".
>
> (g) … I find that G.R. will continue, on a balance of probabilities, to engage in poor parental decision making in the future, as she has done in the past. As a result, there is substantial risk, which is apparent on the evidence, that M.E. will suffer if returned to her care.

[74] It appears Justice Forgeron was quite correct in her prediction for the future of G.R. and K.C. G.R. has failed to correct her parenting deficiencies which were clearly a concern for Justice Forgeron in 2011, and still a concern for the Court today.

[75] The evidence is clear, convincing and cogent that K.C. is the father of M.; G.; K.; and I., the logical conclusion of fact is that K.C. is, on a balance of probabilities, the father of W. In the absence of direct evidence in this regard, the Court can and will make an inference that G.R. is still maintaining an "anti-social" relationship with K.C.

> [76] If I am not correct in finding K.C. is the father of W., then there is, nonetheless, sufficient evidence to safely conclude, on a balance of probabilities, that G.R. is still maintaining "anti-social relationships" in the general sense. Her wilful failure to disclose the paternity of W. clearly supports this conclusion. (Emphasis of hearing judge)

[14] The hearing judge further concluded:

> [91] The birth of W. in July 2018 confirms earlier fears that G.R. would reunite with the father of her previous nine children. G.R. was well aware that there was essentially a "zero tolerance" policy in effect with regard to her having a relationship with K.C. To have a tenth child with K.C. under these circumstances is highly unconscionable and shows blatant and total disregard for the best interests of her children.
>
> [92] Any suggestion that the father of W. is some person other than K.C. does not assist G.R. in her bid to have the children returned to her. Not to disclose the identity of the father, or participate in DNA testing, only establishes that G.R. attempted to manipulate the reality of her situation by being evasive and uncooperative. Such conduct cannot be condoned, nor be seen to be in the best interests of her children to any extent.
>
> [93] G.R. testified that K.C. was out of her life. G.R. has not established a base of credibility upon which the Court can safely conclude that K.C. is completely out of her life. To this point, the history of the relationship with K.C. betrays G.R.'s evidence to the contrary. Justice Forgeron predicted this outcome in her decision. Since that time G.R. has had four, if not five, children fathered by K.C. G.R. has clearly not been listening to, nor understanding, the child protection concerns associated with K.C. Had G.R. accepted services, this concern had the potential to be addressed, but G.R. has chosen her path; a path which prohibits the safe return of the children to her.

Issues

[15] In her Notice of Appeal, G.R. sets out her allegations of error as follows:

1. The hearing judge erred in accepting some evidence of Dr. Landry adduced at trial which contradicted his Parental Capacity Assessment and, as such, said evidence was inherently unreliable;
2. The hearing judge erred in failing to give due and proper consideration to the finding and conclusions of Dr. Landry in the Parental Capacity Assessment in which he stated that there was little evidence that the appellant would present a risk of harm to the children;

3. The hearing judge erred in failing to give due and proper consideration to the findings and conclusions of Dr. Landry in the Parental Capacity Assessment that the appellant could safely parent her children without engaging in services;
4. The hearing judge erred in concluding that it would not be safe to return the children to the care of the appellant;
5. The hearing judge erred in finding that there would be a substantial risk of harm to the children if they were returned to the care of the appellant; and
6. The hearing judge erred in finding that the children remained in need of protective services.

Standard of Review

[16] The standard of review of a trial judge's decision on a child protection matter is well-settled. The Court may only intervene if the trial judge erred in law or has made a palpable and overriding error in his appreciation of the evidence. In *Mi'kmaw Family and Children's Services of Nova Scotia v. H.O.*, 2013 NSCA 141 Saunders, J.A. wrote:

> [26] Questions of law are assessed on a standard of correctness. Questions of fact, or inferences drawn from fact, or questions of mixed law and fact are reviewed on a standard of palpable and overriding error. As Justice Bateman observed in *Hendrickson v. Hendrickson*, 2005 NSCA 67 at ¶6:
>
> > [6] ... Findings of fact and inferences from facts are immune from review save for palpable and overriding error. Questions of law are subject to a standard of correctness. A question of mixed fact and law involves the application of a legal standard to a set of facts and is subject to a standard of palpable and overriding error unless it is clear that the trial judge made some extricable error in principle with respect to the characterization of the standard or its application, in which case the error may amount to an error of law, subject to a standard of correctness. ...
>
> [27] Experienced trial judges who see and hear the witnesses have a distinct advantage in applying the appropriate legislation to the facts before them and deciding which particular outcome will better achieve and protect the best interests of the children. That is why deference is paid when their rulings and decisions become the subject of appellate review. Justice Cromwell put it this way in *Children's Aid Society of Halifax v. S.G.* (2001), 193 N.S.R. (2d) 273 (C.A.):

> [4] In approaching the appeal, it is essential to bear in mind the role of this Court on appeal as compared to the role of the trial judge. The role of this Court is to determine whether there was any error on the part of the trial judge, not to review the written record and substitute our view for hers. As has been said many times, the trial judge's decision in a child protection matter should not be set aside on appeal unless a wrong principle of law has been applied or there has been a palpable and overriding error in the appreciation of the evidence: see **Family and Children Services of Kings County v. B.D.** (1999), 177 N.S.R. (2d) 169 at ss. 24. The overriding concern is that the legislation must be applied in accordance with the best interests of the children. This is a multi-faceted endeavour which the trial judge is in a much better position than this Court to undertake. As Chipman, J.A. said in **Family and Children Services of Kings County v. D.R. et al.** (1992), 118 N.S.R. (2d) 1, the trial judge is "... best suited to strike the delicate balance between competing claims to the best interests of the child."

[17] To justify this Court's intervention, G.R. must satisfy us that in reaching his decision to place the children in permanent care, the hearing judge made an error of law or a palpable and overriding error of fact. Without such an error, we cannot re-weigh the evidence and substitute our view for that of the hearing judge.

Analysis

[18] It is clear from G.R.'s written and oral submissions that her complaint of error rests on the hearing judge's treatment of the evidence of Dr. Landry. A court-appointed expert, Dr. Landry undertook a parental capacity assessment in relation to G.R. and filed a written report with the court prior to the hearing. Neither party challenged his qualification as an expert capable of providing opinion evidence. There was no suggestion Dr. Landry should not be permitted to provide oral evidence.

[19] At the hearing, counsel for G.R., the Minister, and the hearing judge questioned Dr. Landry as to the basis for the conclusions in his written report, including the factual foundation on which his opinion rested. The record demonstrates that in the course of his *viva voce* evidence, Dr. Landry testified G.R. was not forthcoming with historic background information relating to her circumstances. He further acknowledged that some concerning aspects of G.R.'s psychological testing results had not been incorporated into the conclusions contained in his report.

[20] On appeal, G.R.'s counsel focuses almost exclusively on one sentence in Dr. Landry's assessment report. As noted earlier, it was set out by the hearing judge in his written reasons. It reads:

> There is little evidence that Ms. R. would present a risk to the children [when] she is not in a relationship with an anti-social partner.

[21] During his testimony at the hearing, Dr. Landry was not prepared to opine there was "little risk" to the children should they be placed in the care of G.R. He expressed the view that G.R. required extensive therapeutic intervention before the risks posed to the children could be alleviated.

[22] On appeal, G.R. argues the hearing judge erred by considering the *viva voce* evidence of Dr. Landry, and says that he ought to have accepted the written opinion set out above. The arguments advanced on her behalf at the appeal hearing demonstrate that she is not alleging an error of law. She is simply challenging the weight the hearing judge afforded to the various aspects, written and oral, of Dr. Landry's evidence.

[23] When pressed by the panel as to why the hearing judge ought not to have accepted Dr. Landry's "unreliable" *viva voce* evidence, G.R.'s counsel could not articulate any reason other than alleging Dr. Landry, in the face of vigorous questioning, "surrendered to the truth".

[24] There is no merit to G.R.'s allegation that the hearing judge erred. She has neither identified an error of law, nor a palpable and overriding error of fact. In dismissing the appeal, I would note:

- The hearing judge was not compelled to accept any particular aspect of Dr. Landry's evidence. It was all admissible evidence. As such, the hearing judge was entitled to accept some, all, or none of it. G.R.'s complaint lies squarely in how the hearing judge chose to weigh the opinion evidence. It is clear he considered the entirety of Dr. Landry's evidence as well as each party's submissions on how it should be weighed. It is not our function to re-weigh and re-assess the evidence that was properly before the hearing judge;

- Given the unchallenged factual finding of the hearing judge regarding the paternity of the youngest child, G.R.'s reliance on the written report was a non-starter. The optimism expressed in the written report regarding G.R.'s ability to parent the children was clearly premised upon her not being

involved in “an anti-social relationship”. The hearing judge found she was still engaged with either K.C. or, given her evasiveness, involved in other concerning relationships. Based on the record before us, this finding was clearly available to the hearing judge. It was his to make;

- There were ample other concerns demonstrated in the evidence which supported the hearing judge’s conclusion that G.R. remained a risk to her children. Her failure to engage in court-ordered services aimed at alleviating the risk of harm is just one example. The evidence of Dr. Landry, while undoubtedly of assistance to the hearing judge, was only one aspect of the evidence which strongly supported the hearing judge’s ultimate conclusion that the children remained in need of protective services.

Disposition

[25] Having found no error of law, nor a palpable and overriding error of fact, I would dismiss the appeal without costs.

Bourgeois, J.A.

Concurred in:

Wood, C.J.N.S.

Bryson, J.A.