SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. C.C.*, 2019 NSSC 11

Date: 2019-01-09
Docket: SFSNCFSA No. 104784
Registry: Sydney

Between:

The Minister of Community Services

Applicant

v.

C.C. and R.M.

Respondents

LIBRARY HEADING

Restriction on Publication: Children and Family Services Act, s. 94(1)

Corrected Decision: The text of the original decision has been corrected according to the attached erratum dated January 15, 2019.

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: August 22, 23, September 17, 18, 24, October 4, 5, and November 30, 2018

Summary: The Minister applied for a permanent care and custody order of a four year old child who'd spent extended time in the care of the Minister or extended family. The parents had a lengthy child protection history, and although they accessed some services and demonstrated some gains, they resisted other services. In addition, the father had recently resorted to marijuana use again to cope. The Court found that the time period for a final disposition order had passed, due to the length of time it took to complete the protection hearing, and that with the child still at risk, it had no other option but to place the child in the Minister's permanent care. In the alternative, the court held that a further temporary care order was precluded under s. 46(6) of the Act.

Key words: **Child protection, permanent care and custody, time period for final disposition order**

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

THIS INFORMATION SHEET DOESN'T FORM PART OF THE COURT'S DECISION. QUOTES MUST BE FROM THE DECISION, NOT THIS LIBRARY SHEET.

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. C.C.*, 2019 NSSC 11

Date: 2019-01-09
Docket: *SFSNCFSA* No. 104784
Registry: Sydney

Between:

The Minister of Community Services

Applicant

v.

C.C. and R.M.

Respondents

TO PUBLISHERS OF THIS CASE:
PLEASE TAKE NOTE THAT SECTION 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADINGS BEFORE PUBLICATION.

SECTION 94(1) PROVIDES:

Prohibition on publication
1. 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.

Corrected Decision:	The text of the original decision has been corrected according to the attached erratum dated January 15, 2019.
Judge:	The Honourable Justice Lee Anne MacLeod-Archer
Heard:	August 22, 23, September 17, 18, 24, October 4, 5, and November 30, 2018
Final Written Submissions:	December 18, 2018
Written Release:	January 9, 2019
Counsel:	Danielle Morrison for the Applicant Greg Englehutt for the Respondent, C.C. Coline Morrow for the Respondent, R.M.

By the Court:

INTRODUCTION:

[1] C.C. and R.M. are the parents of D.C. She is 4 years of age. She's been in the Minister's care for the past 21 months due to child protection concerns. Cumulatively during her lifetime, D.C. has spent about 3 years in the care of the Minister or extended family.

[2] The Minister has advanced a plan for permanent care and custody. C.C. and R.M. love their daughter and want her returned to their care.

[3] These parents have a lengthy child welfare history. There have been concerns with unfit living conditions, domestic violence, addictions, mental health, and conflict with the law. The Minister says that these risks continue. The parents say the risks have been addressed.

BACKGROUND

[4] C.C. was involved with the Minister before she met R.M. The Minister's concerns included unfit living conditions and drug use. When she and R.M. became partners, R.M. was involved with the Minister as well. He was in a relationship where he perpetrated domestic violence and used drugs. His daughter with that former partner was exposed to both risks.

[5] An earlier child protection proceeding involving D.C. was terminated less than three months prior to the filing of this one. During that hiatus, the Minister remained involved with C.C. and R.M., because they had their son in their care under a supervision order.

[6] This proceeding was filed on March 29, 2017. I found D.C. to be a child in need of protective services on January 18, 2018, at the same time as I placed D.C.'s younger brother in the Minister's permanent care and custody. This followed a combined disposition review hearing and protection hearing.

[7] Evidence in the last hearing started within the legislative timelines, but ran over by several months due to illness and scheduling challenges. The latest hearing

was plagued by similar problems, as well as the parents' failure to appear on one scheduled hearing date.

[8] The evidence in this hearing focused on developments after January, 2018. Specifically, the question is whether the parents have reduced the risk to D.C., such that she can be placed back in their care.

[9] I have considered the evidence from the earlier hearing, as well as the evidence from this hearing. I've reviewed the documents tendered through witnesses or by agreement of the parties, as well as the excellent briefs filed by counsel. I have also considered the legislation and the caselaw cited by counsel.

[10] Finally, I have applied the civil onus, requiring the Minister to prove her case on a balance of probabilities.

ISSUES

1. Is D.C. still a child in need of protective services?
2. What order should be granted?

LEGISLATION

[11] In any proceeding under the **Children and Family Services Act**, S.N.S.1990 c.5, the Court must give priority to the best interests of the child, in accordance with s. 2(2). The factors to be considered in determining a child's best interests are set out in s. 3(2) of the **CFSA**, which I have considered and applied.

[12] Before a court can grant an order removing a child from the care of a parent, the **CFSA** requires the circumstances enumerated in s. 42(2)-(4) to be met.

[13] The court must also be cognizant of the legislative time periods. According to the preamble, proceedings under the **CFSA** must respect a child's sense of time.

[14] The Minister argues that because the protection hearing took place over several months, the time period for a final order elapsed in September, 2017. She notes that the protection hearing is mandated to occur 90 days after filing; the first disposition hearing must take place within 90 days of the protection hearing; and there is a 12 month deadline for all disposition orders involving children in temporary care (for a child of D.C.'s age).

[15] Irrespective of the legislative deadline, the Minister argues that the Court should grant an order for permanent care and custody at this time, because the Court is not required to exhaust the time limits before making its final decision.

[16] In particular, the Minister relies on s. 46(6) of the **CFSA** which states:

> Further order for temporary care and custody
>
> (6) Where the court reviews an order for temporary care and custody, the court may not make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

Issue 1 – Is D.C. still a child in need of protective services?

[17] The Minister says that not much has changed since January, 2018. She says that D.C. remains at risk if returned to the care of C.C. and R.M.

[18] The parents say that they have matured, and that they have accessed services to address the risks. They say D.C. is no longer a child in need of protective services and that she should be returned to their care.

[19] The plan for permanent care of D.C. (the PCC plan) was filed on February 13, 2018. Until then, the Minister had followed a case plan offering the parents remedial services to address the identified risks. The Minister identified those risks as: substance abuse, inadequate parenting skills, maintaining a clean and appropriate home, criminal activity, and R.M.'s mental health.

[20] I will address each risk:

#1 Substance abuse

[21] R.M. has a history of opioid abuse. He's been a patient in the opiate recovery (methadone maintenance) program for several years, and most recently accessed services through the New Horizons clinic in Sydney. Dr. Naeem, who treated R.M. at the clinic, testified about his progress.

[22] She says that R.M. was generally cooperative with the program. She acknowledged that he missed several appointments; that on one occasion he delayed providing a mandatory urine sample for drug screening by two days; that he used marijuana occasionally; and that he weaned himself off methadone despite the plan to switch him to Suboxone to assist in his treatment.

[23] Despite these concerns, Dr. Naeem says that she is optimistic R.M. can remain abstinent from opioid abuse. However, she says that he can reconnect with the program at any time.

[24] R.M. participated in counselling sessions with Barry McNeil, a nurse at New Horizons. Mr. McNeil says that R.M. showed a good understanding of addictions, and showed a strong desire to remain drug-free. Despite his suggestion that R.M. connect with Narcotics Anonymous (N.A.) for support, R.M. did not do so.

[25] The Minister argues that R.M. presents a risk by virtue of his self-directed methadone withdrawal. She argues that R.M.'s decision to simply stop taking methadone, combined with lack of ongoing relapse prevention services and recent marijuana use, enhances the chance of relapse.

[26] Dr. Naeem was not concerned about R.M.'s manner of weaning himself off methadone. She says that the end goal of the program is to stop all drugs eventually anyway. Likewise, and somewhat surprisingly, Dr. Naeem wasn't overly concerned with R.M.'s marijuana use during his treatment.

[27] Dr. Naeem's focus is narrow, dealing only with opioid withdrawal and recovery. My focus in necessarily broader; I must consider the best interests of D.C., the risks posed by marijuana use in the context of R.M.'s history, the risk of relapse where there are few supports in place, and overall, R.M.'s ability to provide a safe, stable home for his daughter.

[28] The concern is not only that R.M. used marijuana while weaning from methadone, but that he used it in the week leading up to the trial, to help him sleep. He no longer has a valid prescription for marijuana, but bought it legally.

[29] R.M. was honest about his marijuana use. He appears to recognize its negative impact on functioning and judgment, because he says he'd never use it while in a child-caring role. Despite that assurance, there are several problems with that logic: first, he knows that marijuana use may exacerbate anxiety and depression, both of which he's experienced in the past. Secondly, he has been subject to a court-ordered

prohibition on the use of drugs, except those prescribed for him, and taken in the manner and dosage prescribed since 2016. Finally, there's no evidence to say how long one must wait after using marijuana for its effects to dissipate. Saying you won't use it while caring for a child is too simplistic.

[30] Although I'm satisfied that R.M. remains abstinent from opioids at this time, I agree there is a real concern about the potential for relapse and the lack of supports in place. R.M.'s resort to marijuana as a sleeping aid is concerning. He didn't seek medical advice about alternative medications, nor did he reconnect with New Horizons or N.A. for support. He simply chose to self-medicate.

[31] R.M. signed a release with his prescription marijuana provider in 2017 which indicates his understanding that "there is considerable debate and a great lack of consensus among Health Care Practitioners about the degree to which the regular consumption of cannabis may: correlate, in some cases, with mental illness, such as bipolar disorder and schizophrenia." R.M. was diagnosed with possible bipolar disorder several years ago, and to date, that diagnosis hasn't been properly explored.

[32] To add cause for concern, R.M.'s 2017 medical marijuana intake form indicates the reason for treatment is "depression/anxiety". While he denies telling the physician that this was the reason he'd sought a prescription, it's not likely the physician entered that information without input from R.M.

[33] R.M. suffered a panic attack in early 2018, after hearing about the allegations against him involving D.C. He was afraid to leave the home. He was stressed by that investigation and this proceeding, all of which heightens the need for him to seek mental health treatment, and to avoid unprescribed and unmonitored cannabis use.

[34] The Minister also says that C.C.'s denial of past drug use is concerning, especially given my finding to the contrary in January, 2018. But more of a concern to the Minister is C.C.'s defense of R.M.'s marijuana use, and the risk that if he relapses and starts using hard drugs again, she will not takes steps to protect D.C. She has put R.M.'s interests above D.C.'s in the past.

#2 R.M.'s mental health

[35] In the PCC plan, the Minister identified mental health concerns and requested that R.M. "… participate in a mental health assessment to determine what hurdles are present to prevent him from engaging in the case plan."

[36] The Minister says that R.M. still exhibits signs of impaired mental health, including anxiety, panic attacks, and angry and abusive behaviours. The Minister also says that R.M.'s refusal to discuss matters with the worker (by leaving the room) and his failure to attend access with D.C. demonstrates an inability to cope, avoidance behaviour, and a lack of appreciation for the child's needs.

[37] R.M. argues that leaving the room, rather than getting into an argument with the social worker, was the right choice. I agree that avoiding an argument is good. Avoiding difficult conversations is not.

[38] As for access, R.M. says that his visits were never reinstated after they were placed on hold in early 2018. That was pending investigation of the allegations involving D.C. R.M. testified that he didn't resume visits when the investigation was concluded, because he wanted to avoid an interruption in C.C.'s access. At the same time, he is adamant that his access was never reinstated.

[39] R.M. cites a conversation with supervisor Sandi Virick in October, 2018 as proof that his access suspended. He says that he wanted to attend D.C.'s birthday party, but Ms. Virick told him that access was on hold, and that D.C.'s views would have to be canvassed before visits resumed.

[40] To place this in context, this conversation occurred about ten months after R.M. last attended an access visit. The Minister had just received Dr. Landry's report on attachment, in which he notes that D.C. "has experienced a great deal of adversity and had multiple care-givers." The report identifies a need to provide continued "support to deal with her attachment and behavioural challenges."

[41] It's not surprising that the Minister wanted to carefully manage any reintroduction between D.C. and R.M. Given his lengthy absence from visits and Dr. Landry's report, his access would have to be reviewed with the child's interests in mind.

[42] R.M. argues that the Minister should have called rebuttal evidence on this issue from Ms. Virick, who was present in court. That would have been helpful, as it is that supervisor with whom R.M. spoke in October, 2018.

[43] However, failure to do so does not mean that I must accept R.M.'s version of events. If he was unreasonably denied access, there were a number of avenues available to him. According to social worker Amy Donovan, he didn't raise the issue with her. It wasn't raised in court, and he didn't file a motion to enforce access.

[44] Further, the conclusion that R.M.'s access was reinstated is supported by the fact that R.M. had contact with D.C. via video chats during C.C.'s access. This wouldn't have been allowed if the Minister was denying access to R.M. throughout 2018.

[45] There is an important distinction between a denial of access by the Minister and choosing not to attend access. The fact that R.M. blames the Minister for his lack of access is part of a pattern of blame by both parents. They blame the social worker for lack of support, they blame the Minister for missed access, and they blame Family Services for missed appointments.

[46] Both parents say that the social worker made no suggestions when asked what more they could do to address the Minister's concerns. Yet the PCC plan filed in June, 2016 and the 2018 PCC plan for D.C. both laid out what was expected. In particular, R.M. was expected to obtain a mental health assessment and engage with mental health services. To that end, Ms. MacDonald sent two referrals to Family Services to request counselling.

[47] The parents also say that the Minister should have contacted all of their service providers before making a decision to present a PCC plan. While it's preferable to do so, the Minister wasn't focused on the status of those other services in February, 2018. By that time, the Minister had been involved with these parents for several years, and R.M. still hadn't undergone a mental health assessment. He hadn't even started counselling as a prelude to mental health treatment.

[48] So long as R.M.'s mental health remains untreated, the Minister argues that there is a risk of conflict between R.M. and C.C. A risk of domestic violence in the home presents a risk for any child in their care.

[49] R.M. and C.C. says there is no evidence to support the Minister's argument. There have been no recent reports of domestic violence, and they have taken services to address communication issues. R.M. took an anger management program, and says he deals better with stress now, by pursuing hobbies such as painting and cooking.

[50] Throughout the Minister's involvement with R.M., he's been asked to access mental health services. The concerns include the adversity he suffered as a child, its implications for his current functioning and role as a parent, and a prior diagnosis of bipolar disorder.

[51] The social worker acknowledged that there's a lengthy wait time for mental health services in this area. She said that individual counselling was intended to bridge that gap for R.M. The PCC plan filed in their son's proceeding in June, 2016 included the requirement to engage with mental health services. Thirty months later, R.M. still hasn't started individual counselling.

[52] R.M. asked the Minister to pay for private counselling after his son was placed in the Minister's permanent care. The Minister denied this request, because he'd failed to engage with Family Services, a publicly funded counselling service.

[53] In her submissions, the Minister suggests that R.M. could have applied to the court for approval of private counselling and didn't do so, but in fact he did. His counsel filed a motion by correspondence on May 7, 2018, but he chose not to pursue his motion. No decision was made on that issue.

#3 Inadequate parenting skills/maintaining a clean and appropriate home

[54] During January, February and part of March, 2017, D.C. and her brother were in the care of their parents under a supervision order. After being unable to gain access to the home for several weeks, workers finally gained entry on March 17, 2017. They discovered the children living in unfit and unsafe conditions, and there was evidence of marijuana use in the home. D.C. and her brother were taken into care as a result.

[55] The parents acknowledge the unfit living conditions. They initially blamed the condition of the home on illness during the week prior, but it was clear that the home hadn't deteriorated to that point in just one week. R.M. and C.C. say they have benefited from family support services offered by the Minister since then, and now understand the need to maintain a clean, safe home. They also say they have implemented a cleaning regime, wherein they share cleaning tasks and tackle them regularly, rather than let things pile up and get out of control.

[56] The cleanliness and safety of C.C.'s home has been a longstanding concern, even before she and R.M. started their relationship. She's promised to maintain her home appropriately in the past, but concerns have resurfaced over and over again. The child (and her siblings) was placed with relatives so that the home could be cleaned on several occasions.

[57] C.C. and R.M. moved to a new location on April 1, 2018. Ms. Donovan visited shortly after the move and observed some clutter, which she attributed to the move. When she went back on May 14, 2018, the home was still cluttered. This caused concern, as this was 6 weeks after the move. Despite this, the family support worker and enhanced home visitors reported no concerns. There is no evidence that the home ever reverted back to the same squalid conditions found on March 17, 2017.

[58] The issue, however, is that without children in their care, the ability of the parents to maintain their new routine has not been tested. This is especially a concern where C.C. says that she plans to return to school and R.M. is working. The stresses associated with those changes, on top of parenting a toddler, could be overwhelming. They became overwhelmed caring for two children in 2017, even though C.C. wasn't working and they had her family's support.

[59] History of parenting is relevant in this context. R.M. and C.C. have been involved with the Minister for years, individually and as a couple. They say the "penny dropped" for them after their son was placed in the Minister's permanent care and custody in January, 2018. They say that the problems identified by the Minister will not recur, and they ask for a chance to demonstrate this.

[60] As Justice Lynch noted in **NCCS v SN**, 2011 NSSC 198: "We do not take children permanently from their parents for failure to participate in services." Services are not a goal in themselves. They are not offered in isolation. The point of remedial services is to improve the parents' ability to provide a safe, stable home for their children.

[61] R.M. and C.C. appear sincere. They say they have matured, and they are committed to change. R.M. no longer abuses opioids. They are keeping a clean house. They initiated support services through Family Place Resource Centre, and they engaged well with the family support worker and enhanced home visitors.

[62] Despite these gains, C.C. and R.M. have not fully complied with the plan advanced by the Minister. They lack insight into the need for some services, and have resisted certain services, such as counselling. C.C.'s engagement with Family Services has been unsatisfactory, and R.M. has not engaged in individual counselling at all.

[63] Nor is there any evidence that R.M. intends to pursue a mental health assessment or treatment. He previously testified that he sees no need. Currently, he

acknowledges only that it might help in coping with day-to-day situations. He told Family Services that he had a "horrible" childhood, but denies any need to address the adversity he suffered as a child, and its implications for his functioning as a parent. Further, his prior bipolar diagnosis must be explored, to either rule it out, or properly treat it.

[64] In addition, R.M. admits to using marijuana for sleep, and he continues to display anger and anxiety in dealing with the Minister. This contradicts his evidence that he copes better with stress now.

[65] In that vein, the Minister asks the court to infer from R.M.'s "altered" appearance that he's unstable and exhibiting physical symptoms which are cause for concern. The parents argue that this is pure speculation. R.M. was clearly gaunt during the hearing, but I can't infer a mental health crisis or decline from R.M.'s appearance. The Minister didn't ask him about recent weight loss, and R.M. didn't address it. There's insufficient evidence to support such an inference.

#4 – Criminal activity

[66] There is no evidence of recent criminal charges involving R.M. and C.C. The Minister argues that R.M.'s actions in avoiding appointments in June, 2018 suggest that he's in trouble with the law again. He says he thought there was a warrant out for his arrest, but it turned out that police only wanted to question him about a friend.

[67] The Minister argues that if R.M. thought there was a warrant for him, he must be involved in criminal activity. R.M. disputes this. He says he was responsible for making arrangements to meet with police after he learned they wanted to speak with him. He denies any wrongdoing. However, his belief that there might be a warrant out for him, and his avoidance of places the police might locate him for several days, belies this.

[68] The Minister also argues that because police wanted to question him about a friend, R.M. must not have cut all ties with his former associates. R.M. wasn't asked about his current relationship with the person under investigation. The person wasn't identified. The investigation could relate to a current or historic matter. There isn't enough evidence to conclude that R.M. is still associating with his former associates. R.M.'s belief that there was a warrant out for his arrest in June, 2018 is more of a concern in any event.

Conclusion re: risks

[69] The first proceeding involving D.C. was terminated on the basis of the parents' assurances that they would pursue services. R.M. was expected to refrain from drug use and attend an addictions assessment, mental health, and anger management. He and C.C. were to complete Family Support services, and engage with the enhanced home visitor program.

[70] Two years later, they've completed a number of those services and demonstrated some improvements. R.M. and C.C. believe they've done everything possible to ensure that D.C. is returned to their care. The question is whether there's "real enough" improvement.

[71] Both parents have shown progress and insight. C.C. recognizes the need to delve into her historic inability to maintain a clean home. R.M. got off opioids and then weaned himself from methadone. He's holding down a job and C.C. says she plans to return to school. Those accomplishments and goals are worthy of recognition.

[72] However, although they have shown a commitment to some services, they have only engaged with services they choose to complete, and which, for the most part, are supportive in nature. They have not engaged in the hard work of exploring the root of their problems and how to address them.

[73] Their history shows a pattern of promising to comply, and then failing to do so. So while there's improvement in some areas, abstinence and the outstanding counselling/mental health services are the lynchpin of the Minister's plan. Without "real" improvement in those areas, the child remains at risk.

[74] I find that D.C. remains a child in need of protective services at this time.

Issue 2 – What order should be granted?

[75] Under s. 45(2)(a) of the **CFSA,** the final deadline for review of all disposition orders in a case involving a child of D.C.'s age is 12 months after the first disposition order was made. That would push the deadline ahead to April, 2019.

[76] The Minister argues that to honour the spirit and intent of the legislation, the court should consider September, 2017 as the outer deadline (being 18 months after

the proceeding started). This would mean that the deadline for a final disposition order has already passed.

[77] The parents argue that the time period is properly calculated at April, 2019. They say that they should be allowed the opportunity to demonstrate continued progress, with D.C. in their care, over the next 4 months.

[78] Alternatively, they argue that an early PCC order requires consideration of s.46(6)of the **CFSA**, as well as the factors laid out by Forgeron, J. in **Mi'Kmaw Family and Children's Services v KDo**, 2012 NSSC 379, which I have considered.

[79] I am satisfied that the time period for a final disposition order in this case passed in September, 2018. Children should not wait years for litigation to conclude. The time frames set out in the legislation not only provide an incentive for parents to complete remedial services and demonstrate improvement early in the process, but they also ensure that a child's sense of time is respected.

[80] If I am wrong in my conclusion that the time period has passed for a final disposition order, I find that the conditions set out in s.46(6) have been met in any event. The applicable factors are laid out below.

[81] If the maximum time period hasn't elapsed, the options available to a court at the disposition review stage are:

1. return the child to the care of her parents and dismiss the Minister's motion;
2. leave the child in the Minister's temporary care, with terms and conditions, including remedial services;
3. place the child in the supervised care of her parents, subject to terms and conditions, including remedial services; or
4. place D.C. in the permanent care of the Minister

[82] I have found that D.C. remains a child in need of protective services, so option #1 is not available.

[83] Options #2 & #3 are not available where I have found that the time limit has elapsed. Even if there was 4 months left, the parents have not demonstrated the type of commitment to services and the improvements required to place the child back in their care under a supervision order, nor to extend the temporary care order.

[84] That leaves only option #4. I have considered the following:

Section 42(2) – have the least intrusive measures, including services, been attempted and failed ? or would they be inadequate to protect the children ?

[85] Remedial services were offered, but did not alleviate the risk to D.C. In particular, the parents had numerous opportunities to access counselling services, but only started to engage after their son was placed in the Minister's permanent care. To date, engagement and progress has been unsatisfactory.

[86] Only a month and a half before I placed their son in the Minister's permanent care, C.C. and R.M. missed an appointment for couples counselling. At that time they were awaiting my decision. Irrespective of the outcome on their son's file, they knew that D.C.'s file would continue.

[87] They told workers they missed the appointment on December 5, 2017 because of the holidays. At that stage of the proceedings, and given the fact that the appointment was 3 weeks prior to Christmas, this is wholly unacceptable.

[88] C.C. also says that Family Services shouldn't have counted October 16, 2017 as a no-show. That afternoon at 2:45 p.m. a call was placed unsuccessfully to them, for purposes of completing Intake. Only 15 minutes later, there's an entry indicating that a letter would be sent to reschedule a missed Intake.

[89] The Family Services file doesn't contain an entry confirming when or how the parents were advised of this Intake appointment. However, subsequent entries confirm that the call was scheduled, and that C.C. was aware of it. She phoned Family Services the next day to advise that "she was in court and **unable to do intake** new intake set." [my emphasis]

[90] C.C. and R.M. say they missed another appointment because they were double booked and were sent home. The Family Services file doesn't reflect this; it records this appointment as a no-show. Even if they were truly double booked in error, they should have followed up the next day, and the next and the next, to ensure the appointment was rescheduled. They didn't follow up for a month, at which time they requested individual counselling instead of couples counselling.

[91] This was in mid-May, 2018. The parents knew that there is a time limit for dealing with D.C.'s file. Given that knowledge, C.C. and R.M. should have followed up to ensure that their counselling started as soon as possible.

[92] Yet even after Family Services expedited the new Intake, they were unable to reach C.C. to schedule an appointment. After another referral was sent on her behalf, Family Services managed to schedule an appointment. C.C. attended two individual counselling sessions before her file was closed again for non-attendance. She reconnected with Family Services in October, 2018.

[93] A similar pattern is evident on R.M.'s file. He has yet to complete Intake with Family Services for individual counselling, though he has an appointment scheduled in the new year.

[94] R.M. and C.C. say they didn't receive letters sent from Family Services with appointment dates. They moved several times during the proceeding. Ms. Church acknowledged that the Family Services computer system overrides the address on file, each time a new address is input. There is no hard copy of the letters sent to C.C. and R.M. on file, so there's no way to confirm to which address each letter was sent.

[95] The Family Services computer system and record-keeping practices garnered much criticism during this hearing, with good reason. However, I accept Ms. Church's evidence that follow-up appointments are generally booked before clients leave their session. I also accept that if letters were sent, it would only be to follow up on missed appointments. The file was closed due to the parents' failure to attend on more than one occasion.

[96] Even if letters went to the wrong address, C.C. and R.M. knew they were supposed to access counselling. They failed to keep track of and follow up on appointments. C.C. says that she now keeps a book for appointments, because going by memory hasn't worked. She and R.M. have been involved with services for years, yet it wasn't until very late in this proceeding that she started this habit. At this point, there's no evidence that their attendance has improved.

[97] C.C. and R.M. were present when I delivered my decision on January 18, 2018. I outlined the problems with their engagement and lack of progress with services. They knew what the Minister expected going forward. They knew that if they failed to demonstrate commitment and sufficient progress with services, they could lose custody of D.C.

[98] Lisa Carr, Margie Eisan, and the enhanced home visitors spoke positively about the parents' engagement with their services. However, several of these services were repeats, which suggests the parents were unable to implement and/or maintain the skills taught in those programs.

[99] Dr. Naeem and Barry McNeil spoke positively about R.M.'s engagement with New Horizons. But R.M. only saw Mr. McNeil twice, and he didn't follow up with N.A. as Mr. McNeil suggested. Nor did he take up Dr. Naeem's offer to reconnect with New Horizons before choosing to self-medicate with marijuana before the hearing. His marijuana use is unmonitored, and he has only C.C. for support in his sobriety.

[100] Less intrusive measures would be inadequate to protect D.C. They were tried previously and failed.

Section 42(3) – Are there any family members available to care for the children?

[101] No family members have advanced a plan to care for D.C. at this time.

Section 42(4) and 46(6) - Are circumstances likely to change in a reasonably foreseeable period of time not exceeding the maximum time limits?

[102] The Minister argues that the deadline has passed for D.C., in which case I need not consider whether circumstances are likely to change in a reasonably foreseeable period of time. Even if the time limit hasn't elapsed, the Minister says that it's too late to demonstrate real, meaningful change.

[103] R.M. has not engaged in a mental health assessment or therapeutic counselling to address adversity arising from his childhood, including any mental health disorders that require treatment. He continues to use marijuana to cope. He and C.C. have only engaged in one couples counselling session, and she had attended only two individual sessions up to October, 2018. This falls far short of the Minister's expectations.

[104] R.M. and C.C. failed to improve their insight and ability to cope with their individual challenges, to improve their parenting skills, and ultimately to reduce the risk to D.C. in their care.

[105] These parents are a committed couple who plan to parent together. R.M. works, and C.C. plans to further her education. She has reconnected with her father since January, 2018. Those are all positives.

[106] The problem remains that C.C. makes excuse for R.M., and minimizes their role in past problems. R.M. takes responsibility for some of his past decisions, but he blames others for his failure to comply with the Minister's plan. Both parents feel that their efforts have not been recognized, but that misses the point. Services are not implemented to earn stars; they are meant to assist parents in improving their parenting skills. The goal is for them to resume care of their children without the Minister's involvement.

[107] Failing meaningful engagement in remedial services and demonstrated improvement in the areas identified by the Minister, there remains a real risk to any child in their care. I cannot return her to the care of her parents, so I am left only with option #4, namely permanent care. D.C. needs a safe, stable home and she can't wait any longer for permanency in her young life. The plan is to place her in the same home where her brother resides, with adoption by that family.

[108] Finally, I find that even if there are 4 months left in the time period for final disposition, R.M. and C.C. are not likely to turn things around sufficiently in that time. Their history and level of engagement since January, 2018 belies this possibility. They've had years to show improvement; four months will not make the difference.

DISPOSITION

[109] An order for permanent care and custody for D.C. will issue under s.42(1)(f) and s. 47 of the **CFSA**.

MacLeod-Archer, J.

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Nova Scotia (Community Services) v. C.C.*, 2019 NSSC 11

Date: 2019-01-09
Docket: SFSNCFSA No. 104784
Registry: Sydney, N.S.

Between:

The Minister of Community Services

Applicant

v.

C.C. and R.M.

Respondents

ERRATUM

Judge:	The Honourable Justice Lee Anne MacLeod-Archer
Heard:	August 22, 23, September 17, 18, 24, October 4, 5, and November 30, 2018
Final Written Submissions:	December 18, 2018
Written Release:	January 9, 2019
Erratum Date:	January 15, 2019
Counsel:	Danielle Morrison for the Applicant Greg Englehutt for the Respondent, C.C. Coline Morrow for the Respondent, R.M.

Erratum:

1. Following paragraph 10, under Issues:
   - Issue number 2 has been changed to read: **What order should be granted?**.
   - Issue 3 has been removed.

2. Following paragraph 74, the heading Issue 2 has been changed to read:

- **Issue 2 – What order should be granted?**

2. Throughout the decision, the initials of the child D.M. have been changed to the initials D.C.