SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. K.M.*, 2019 NSSC 152
Date: 20190508
Docket: Halifax No. SFHCFSA-113966
Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

K.M. and S.H.

Respondents

Endorsement

Introduction

[1] This decision is about whether I should appoint Susan Sly as E's Guardian Ad-Litem. E is the 13-year-old son of SH, the father, and KM, the mother, who are the Respondents in a child protection proceeding. The Agency became involved with this family because of concerns that E and his 11-year-old sister are being emotionally abused and neglected within the context of a high conflict parenting dispute. The Agency and the mother support Ms. Sly's appointment; the father does not.

[2] In support of the appointment, the Agency and the mother state that it is important that E's views be communicated to the court by an independent professional, such as Ms. Sly. From their perspective, E's age makes his participation, through a Guardian Ad-Litem, necessary and essential to the proper disposition of this proceeding.

[3] In contrast, the father disputes the appointment for two reasons. First, he notes that Ms. Sly is female and thus subject to gender bias. Second, he notes that Ms. Sly was a former employee of the Agency and now obtains contracts working in child protection proceedings. As a result, Ms. Sly is not independent; she is in a conflict and is biased.

[4] The contested hearing was held on May 6, 2019 and the decision given on May 8, 2019. Ms. Sly and the father were the only witnesses.

Analysis

[5] *Should Ms. Sly be appointed Guardian Ad-Litem to E?*

[6] I am satisfied that Ms. Sly should be appointed Guardian Ad-Litem to E for the following reasons:

- Sections 37(2) and (2A) of the ***Children and Family Services Act*** provides me with the jurisdiction to appoint a Guardian Ad-Litem because E is older than 12 and because I find that such an appointment is desirable to protect E's interests.

- It is in E's best interests to be added as a party and thus the appointment of a Guardian is necessary.

- Given his age, E's wishes should be communicated to the court for consideration. His wishes are but one factor among many that I will balance in any of my decisions.

- Ms. Sly has the professional and personal background to properly fulfill her dual role. First, she is qualified to ascertain E's wishes and to communicate those wishes to the court and to the other parties. Second, she is qualified to advocate about E's best interests, even when E's best interests run counter to the Agency's position or the position of the other Respondents.

- Ms. Sly will provide a neutral and unbiased service. She has no personal interest in the outcome of the case. She has no interest in the proceeding adverse to E.

- Ms. Sly has fulfilled the criteria outlined in the ***Civil Procedure Rules*** and has filed the necessary documents.

[7] By granting Ms. Sly's appointment, I reject the arguments advanced by the father. First, I reject the father's suggestion that Ms. Sly is subject to gender bias because she is female. There is neither a correlation nor a direct logical connection between these two unrelated terms. Further, I am unable to draw an inference that the two are connected.

[8] In ***Jacques Home Town Dry Cleaners v. Nova Scotia (Attorney General)***, 2013 NSCA 4, Saunders JA held, at para 31, that an inference is "a conclusion that is logical" and that an inference is "not a hunch". Rather, he states, that an inference is "a conclusion reached when the probability of its likelihood is confirmed by surrounding, established facts". He finally noted that in the context of judicial decision-making, "drawing an inference is the intellectual process by which we assimilate and test the evidence in order to satisfy ourselves that the link between the two propositions is strong enough to establish the probability of the ultimate conclusion."

[9] Applying this test to the evidence, I am unable to infer that Ms. Sly will inevitably act in the mother's interest, as opposed to E's interest, because Ms. Sly and the mother are both female. There are absolutely no surrounding facts that support such a conclusion.

[10] Second, I reject the father's suggestion that Ms. Sly is in a conflict or is biased because she was once employed as an agency worker or because she now is working in child protection proceedings, often at the request of the Agency. The father's argument is rejected because I cannot infer, nor would a reasonable person infer, bias because Ms. Sly was once an agency employee: **D.R. v Family and Children's Services of Kings County**, 1992 CanLII 4823 (NSCA). Ms. Sly is no longer an Agency employee; she is not paid by the Agency. Ms. Sly has acted as a Guardian Ad-Litem independent of the Agency for over a year. In so doing, Ms. Sly is governed by her ethical and professional obligations to advance the interests of the young person for whom she was appointed, and not the Agency. I am satisfied that Ms. Sly will do just that in the case before me. I reject Mr. H.'s suggestion of bias or conflict as being pure speculation.

Conclusion

[11] Ms. Sly is appointed Guardian Ad-Litem of E. Counsel for Ms. Sly will file the order.

Forgeron, J.