SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Nova Scotia* (*Community Services) v. M.R.*, 2019 NSSC 9

Date: 2019-01-07
Docket: SFHCFSA-107032
Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

M.R. and G.R.

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Elizabeth Jollimore

Heard: January 7, 2019

Summary: Paternal grandmother asked to make a proposal to have five children placed in her care – on the first day of a final disposition (permanent care and custody) trial.

Key words: Children and Family Services

Legislation: *Children and Family Services Act*, S.N.S. 1990, c. 5, subsection 3(2), clause 42(2)(a), subsection 47(3)

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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.

Judge:	The Honourable Justice Elizabeth Jollimore
Heard:	January 7, 2019
Oral Decision:	January 7, 2019
Written Release:	January 10, 2019
Counsel:	Peter C. McVey, Q.C. for the Minister of Community Services Katelyn Viner for M.S. (called M.R. in the pleadings) G.R. unrepresented and not appearing Kelsey Hudson for Susan Sly, guardian for the child, M.

Introduction

[1] At the start of a three-day final disposition trial, I was given a letter with documents attached. The letter contained J.R.'s request that I consider her proposal to have the five children who are the subject of this proceeding placed with her. She is their paternal grandmother.

[2] I rendered an oral decision and said that I might release my decision in writing. I do so now.

[3] There are two issues for me to decide:

a. Should I consider J.R.'s proposal; and
b. If I decide to consider her proposal, how should I consider it? Should she offer evidence, be questioned, make submissions?

Should I consider J.R.'s proposal?

[4] The *Children and Family Services Act*, S.N.S. 1990, c. 5, doesn't contain any direction for handling a request like this.

[5] Mr. McVey says that I may ignore J.R.'s proposal because she didn't file it in the proper form or at the proper time. He says that I am also entitled to consider her proposal if, in my discretion, I think that is the proper thing to do. There is a wide range of options available to me.

[6] The decision whether to consider the proposal is one that engages the children's best interests. What constitutes children's best interests is outlined in subsection 3(2) of *Children and Family Services Act*. Best interests involve a balancing of each child's individual circumstances; each child's relationship needs (involving their immediate and extended family and their siblings); the identified risk; and the impact of delay on the children.

[7] In deciding whether to consider J.R.'s proposal, I also look to its viability. I think this is supported by clause 42(2)(a) of the *Children and Family Services Act*. If the proposal is clearly not viable, that militates against considering it.

Each child's individual circumstances

[8] The existing review order meets the individual needs of each child.

[9] Any order I grant at the end of this hearing must meet each child's individual needs.

[10] I am aware from evidence I earlier heard that J.R. has assisted the parents in meeting the children's needs and providing a home for them when they returned to Nova Scotia.

[11] I am aware that J.R.'s historic involvement did not prevent the children from coming into the Minister's care.

Each child's relationship needs (involving their immediate and extended family and their siblings)

[12] Since October 2017, the children have been in foster care and the Minister has been arranging contact to permit maintenance of sibling and extended family relationships. This contact is not as frequent, as deep or as rich as it would be if the children were together, but it is the best that can be managed, given the children's need for protective services.

[13] If I ultimately decide the children should be placed in the Minister's permanent care and custody this does not mean the children's relationship needs will not be met. Subsection 47(3) of the *Children and Family Services Act* provides that the agency can facilitate contact and communication between the children and their relatives after a permanent care order is made.

[14] So, a decision to not consider J.R.'s plan does not mean the children's relationship needs will be unmet.

Identified risk

[15] Any order I grant at the end of the hearing must address the identified risk.

[16] The evidence I have received in the past suggests that J.R. is not attuned to the identified risk and has not protected the children from it. At the hearing in July and August 2018, J.R. would not admit to anything that wasn't within her personal knowledge, so she presented as a person who was unaware of any conflict and violence within the home of her son and daughter-in-law.

[17] J.R.'s proposal includes abiding by terms and conditions imposed by the Department of Community Services restricting contact between the parents and the children, or supervising this contact. Because the final disposition deadline is less than a dozen days away, the only options available to me are placing the children in the Minister's permanent care or dismissing the Minister's application and returning the children to their parents.

[18] I have no power to order a placement under terms or conditions, so this aspect of J.R.'s proposal cannot address the identified risk the children face. This aspect of her proposal is not viable.

Delay

[19] The deadline for final resolution deadline is January 18, 2019 because the first disposition order was granted on January 18, 2018.

[20] The final disposition deadline is legislated to prevent children from experiencing too long a period of uncertainty in their lives. That uncertainty may relate to concrete matters such as where they go to school or with whom they form friendships or where they live in foster care. It

may relate to matters of much greater significance, such as the emotional uncertainty of wondering whether they are to be reunited with their mother or father, their brothers or sisters.

[21] Before her retirement, J.R. worked for the Department of Community Services as a social worker. In fact, for a time, she was a child protection worker. Unlike many people who come to the court in these proceedings, J.R. would be aware of the statutory requirement that *Children and Family Services Act* proceedings respect children's sense of time and their need for certainty.

[22] J.R. was in court the first day this case was before me on October 2, 2017.

[23] J.R. filed an affidavit on October 11, 2017. Her affidavit was before me at a hearing in July and August 2018 when she testified.

[24] In October 2017 J.R. asked to have children returned to her son and offered to support him if the children were returned to him. Alternately, she said that if I was not prepared to return the children to him, I should place the children with her, or with her niece.

[25] The October application to have the children returned to Mr. R. was abandoned and none of the three (Mr. R, J.R. or her niece) advanced it further until the summer of 2018, when Mr. R sought to have the children returned to him.

[26] At the hearing in July and August 2018, when Mr. R sought return of the children, J.R.'s proposal was to support the children's return to her son. She did not ask to have the children placed with her.

[27] Five months ago, on August 9, 2018 I gave my decision in Mr. R's application. I rejected his request to have the children returned to him.

[28] J.R. wasn't present when I dismissed Mr. R's request for the children's return. However, she has had access visits with the children and, by virtue of those visits, she knows that the children weren't returned. Certainly, in the fall she was asking agency staff about expansions to Mr. R's access: she knew the children hadn't been returned.

[29] On November 13, 2018 I granted an order that materials in this case be served on J.R. since Mr. R couldn't be found and, in fact, the affidavits of attempted service suggested he was trying to make sure he couldn't be given documents. So, J.R. has been receiving documents showing that this case was moving forward to a permanent care trial.

[30] J.R. filed no application for standing under the *Children and Family Services Act*, or any other legislation asking to be considered as a possible home for the children.

Conclusion

[31] When I consider the children's best interests (each child's individual circumstances, each child's relationship needs, the identified risk, and the impact of delay), I conclude that it is in the children's best interests that I not consider the proposal.

[32] The proposal is not viable because it cannot address the identified risk. The delay is contrary to the children's interest in certainty. My decision to not consider the proposal does not undermine the children's individual needs, which are being met, or their relationship needs, which can be addressed under subsection 47(3) of the *Act*.

[33] J.R. may choose to remain in the court for the rest of this hearing or she may decide to leave. If she leaves and does not hear an oral decision, or if I reserve my decision and release a written decision and if I decide that it is in the children's best interests to order them into the Minister's permanent care and custody, I order the Minister to write to J.R. and deliver this letter to her by January 18, 2019. This letter must outline:

- what J.R. must do so the Minister can consider facilitating contact and communication between her and the children under clause 47(3)(a) of the *Act*;

- when J.R. must do this;

- what information J.R. must provide, in addition to the information contained in her letter and attachments of January 5, 2019; and

- what information J.R. must provide to address the concerns raised in the Department's letter of December 28, 2018 as those concerns may relate to contact and communication with the children after a permanent care and custody order has been made.

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

Halifax, Nova Scotia