

DATE: 2004-04-27

2004 CanLII 18155 (ON S.C.)

[1] Family, Youth and Child Services of Muskoka applies for Crown Wardship of the children of N.C. Her children were apprehended by the Children's Aid Society in June 2003. The Society had been supervising mother and children since December 1999. There was a constant pattern of a filthy house to the point that one might consider it unfit for human habitation. Constantly when representatives from the Society or the public health nurse attended at the residence, they would find clothing on the floor throughout the residence. This mess was not a few items of clothing lying on the floor, but rather it appears that someone had ransacked the residence and had dumped every item within and the residence onto the floor. Garbage bags in the kitchen overflowing with garbage were constantly there. Dirty dishes that had piled up for

many days were in the kitchen as well as food lying on the floor and on the coffee table in the living room more common. The young children could reach and consume the garbage and food that was lying about the residence. Plastic bags, which could suffocate children, were found through the apartment. In the kitchen, utensils such as an electric frying pan with a cord hanging within reach of a child resting on a stove above a young child would enable a child too pull the item on top of him or her. During the time of monitoring, mother had two dogs and then got a cat. Workers from the Society noted that dog feces was evident to a large extent in the backyard of the property where the family lived. In addition there would be dog and cat feces within the apartment at times. The smell of cat urine was very prevalent within the residence. Oftentimes the toilet was full of human excrement and simply was not flushed. There had been some suggestion that the toilet needed to be fixed and that the landlord had failed to do so; however, when mother testified she acknowledged that the toilet was full as exhibited in the photographs in Exhibit 1. She did not state that the toilet was broken. D.C. stated that the toilet did not function properly and had to be plunged in order to get it to flush. I can conclude that it was a matter of the occupants of the residence just not flushing the toilet.

[2] The father is S.S. He is not taking part in this proceeding and consents to Crown Wardship.

Issues

[3] An order was previously made that the children were in need of protection. The only issue is what disposition should be made now at this trial?

[4] Mother and grandmother have presented a plan of care wherein the children would be returned to mother and grandmother with the Children's Aid Society continuing to supervise. Is that plan one that can work for the best interests of the children?

[5] If the plan of care from mother and grandmother does not meet the best interests of the children, should there be an order for Crown Wardship without access as requested by the Family, Youth and Child Services of Muskoka?

Review of the Evidence

[6] Mother acknowledges that the mess demonstrated with the photographs in Exhibit 1 accurately depicted how she kept the residence in the past. Her only explanation for allowing the mess to accumulate is that she must have been depressed. No medical evidence has been tendered to establish depression or any health problem on behalf of N.C. Rather, the only evidence is from N.C. herself speculating that she was undergoing a depression. That is not sufficient evidence to reach such a conclusion.

[7] In listening to the evidence of witnesses called by the Children's Aid Society, I heard a constant revelation of a young mother [now age 26] maintaining a filthy, smelly, and dangerous residence for young children. It is evident that the various public servants who worked at supervising mother and children together with the public health nurse bent over backwards to

help this young family. What they found was that mother would clean up the apartment when there was pressure to do so. Once the pressure was off, mother would return to her ways of not cleaning the apartment. There were times when workers would attend unannounced for a visit in order to see what the apartment was like. At that time, if mother was home, they would observe the filthy, messy and in their opinion dangerous apartment. If mother was not home, they could see through the window into the apartment and could see the usual dangerous mess in the residence him. They would then call and speak directly with N.C. or leave a voicemail message to advise that they would be attending for a visit in order to inspect the apartment. It was not uncommon after such a message had been left that N.C. would not be home when the worker attended.

[8] In February 2003, the apartment was so messy and filthy that the Society insisted on the children being removed from the apartment until it was cleaned properly. Arrangements were made for the children to stay with their aunt, T.C., for a week so that with the apartment could be cleaned. The apartment was cleaned, but very shortly after the children returned to their mother, N.C. returned to the same messy and filthy living style.

[9] N.C. smokes tobacco products. The father of the children, S.S., smokes tobacco products. N.C.'s mother, D.C., also smokes tobacco products. The public health nurse stresses that the children were born premature and that tobacco smoke is an aggravating factor for Sudden Infant Death Syndrome, otherwise known as SIDS. When father resided with the family, he and N.C. did not agree that tobacco smoke was hazardous to health of the children. They continued to smoke tobacco products. This was evidenced by full ashtrays being observed in the residence when workers attended. In addition, N.C. openly said to the public health nurse that she did not believe that second hand smoke was hazardous to the health of her children. In addition, she stated that she would open the window to allow the smoke to leave the apartment. One child, K., did die and the cause of death was attributed to Sudden Infant Death Syndrome. After K. died on [...] 2000, B. was born again premature. The public health nurse monitored B. from birth urging mother not to smoke and to maintain a clean and healthy apartment for the sake of the health of the new baby as well as the oldest child, T. The pattern of maintaining the filthy, smelly, unhealthy apartment continued.

[10] There were several separations between mother and father. When N.C. and S.S. would cease living together, N.C. would find herself destitute for living accommodation and for money to maintain her children. This would result in her having to seek public assistance. At times, when she did not have a place to live with the children, she would live with friends in rather crowded accommodation. At other times, she lived with their mother.

[11] When N.C. would get an apartment of her own, and after she began working part-time, her mother would assist with babysitting. The apartment would be a mess when N.C. returned home from work. Her mother did nothing to clean up the mess that would be created while she baby-sat. It would appear that the mess was as bad as was allowed to be established by N.C. In her evidence, N.C. testified that her mother never kept a clean home when she grew up. In fact,

N.C. indicated that when she was a child her mother's residence would have been more of a mess than what is being described in this trial.

[12] N.C. and D.C. present a plan of care for the children. Mother and grandmother live together now in a three-bedroom apartment. They advise the court that the apartment is large enough for the children to return and live with them. They are confident that the children can be cared for properly and safely in their care. At the same time, N.C. advises that she does have disagreements with her mother about how to raise children. For example, N.C. does not agree with her mother that physical discipline should be used with children. I have a concern that this is an indication of conflict between mother and grandmother before co-parenting even begins. Both N.C. and D.C. have a history of not maintaining a clean residence. The history of N.C. maintaining an extremely messy and filthy residence and D.C. keeping a very messy residence causes me to be wary of allowing the children to return to live with their mother and grandmother.

[13] N.C. never obtained birth certificates or health cards for the children. When children are born in the Province of Ontario, the parent is provided with temporary documentation together with proper application forms for permanent documents. N.C. advises that the temporary cards have expired. There have been times during the lives of the children when medical care could not be provided because N.C. did not have the appropriate health care. She had to pay for medical care at a time when she did not have money to do so. She would accumulate bills for medical care and prescriptions and have to try to pay them later. The public health nurse repeatedly urged N.C. to obtain birth certificates and health cards for the children so that N.C. could obtain proper medical care when needed and so that the children would be able to be registered in day care and school. To this day, N.C. has not obtained these documents. She indicated that she completed the applications and that they were returned because she had too many mistakes in them. She has not got around to completing those forms again. This is unfair to the children and jeopardizes their well being should they return to her.

[14] N.C. states that through most of her schooling she was in a special education class. She indicates that she has a learning disability, but she never says what the disability is. Her sister and mother refer to her as a slow learner. Shelley Arnold, the adult protective worker, has noted that N.C. might be borderline delayed, but she does not have sufficient information to say so definitely. Nor has any medical evidence been presented to explain what learning disability might exist. However, I note that her employer confirms that N.C. works at a food establishment and that she does her job well. This includes taking orders and making change. She has developed more of a sense of self-confidence with her job.

[15] As N.C. testified, I observed a person who recognizes that her past conduct was hazardous for the well being of the children. In effect, her evidence acknowledges that the children were in need of protection when the Children's Aid Society apprehended them. What she is saying in this trial is that she realizes her shortcomings in the past. She claims to have learned that she has to keep a clean apartment for the benefit of her children. N.C. wants to have her children reside with her and states that the children need her. She has taken one

parenting skills lecture for one hour. She intends to take other courses in May of this year after this trial. She has not sought counseling or psychiatric assistance for depression if she is depressed. She has not taken on any counseling for alleged abuse by the father of the children. At the most, she says that she spoke to her doctor recently and that her doctor told her that she might have experienced depression and that she should seek assistance through the Mental Health Clinic. She has not done so.

[16] A major hurdle in the past is N.C.'s relationship with the father of the children, S.S. He had a history of abandoning the family, taking up with other female partners and then returning. When that happened, N.C. would welcome him back. The problem that existed was that when the father left the family, they were destitute and had to seek emergency assistance. Often, N.C. would have new living accommodation through social assistance and give it up when S.S. returned. His return would not be long and then the family had start over again to find living quarters and to obtain public assistance.

[17] Family, Youth and Child Services of Muskoka is concerned that N.C. puts her wishes to be with S.S. ahead of those of the children. She would put the family in jeopardy by resuming a living arrangement with him. When he left the family, he did not pay support. When K. died on [...] 2000 the father was at a girlfriend's residence when he was residing with N.C. and the children.

[18] In December 2003, N.C. determined that the relationship with S.S. was at an end permanently because he was prepared to give up the children to Crown Wardship. He has not been in the family picture during the past few months. N.C. says that he will never be in the family scene again. The Family, Youth and Child Services of Muskoka says that the track record of N.C. with S.S. is one that raises a doubt that such a statement by N.C. is accurate. Further, the Society maintains that N.C. has conducted herself in such a way as to put herself ahead of the children. It is her wishes to be with S.S. that came ahead of the children. I am urged to avoid accepting N.C.'s word that all is focused on the children.

[19] The plan of care presented by N.C. and D.C. provides a three bedroom apartment. Originally, each child was to have a separate bedroom and N.C. and D.C. will share the third bedroom. N.C. at trial advises that the plan now is to have the two children share a bedroom with N.C. and D.C. having a separate room. The cost of the apartment can be met with the two incomes of mother and grandmother. T. is to be in school in September. With the work schedules of N.C. and D.C., there will be times when arrangements will be made for T. to go to a daycare facility for a short gap in the time schedules. Details have not been worked out. Daycare for B. will also be arranged. However, details of such arrangements continue to be in the planning stage. Transporting the children at times may have to be done by taxi, but there is a concern about the incomes of N.C. and D.C. being able to accommodate that.

[20] The Society would be satisfied with a co-parenting plan with T.C. being involved as the other person with whom the children would live. That is not possible because T.C. and her partner are looking to buy a home and raise their own family. T.C. is close with the children,

works in Bracebridge and will see the children at least once a week if the children are allowed to live with N.C. and D.C. Family, Youth and Child Services of Muskoka is not satisfied that such an arrangement is in the best interests of the children because N.C. and D.C. do not offer sufficient assurance of caring for the children properly.

[21] No one can expect T.C., as a 29 year working person, who is planning on raising a family of her own with her partner, to put her life on pause. She has assisted N.C. and the children considerably since 1999. T.C. works in a related field with Community Living. She has provided guidance and attendance to the residence of N.C. to try to help mother maintain a clean and safe residence, to establish a plan of care for the children, to obtain birth certificates and health cards for the children and to get involved with Ms. Arnold, an adult protective service worker. T.C. has done a tremendous amount for the family.

[22] In spite of all the efforts of the many workers through Family, Youth and Child Services of Muskoka, the public health nurse and T.C., N.C. has not come to grips with the problems. She continued to resume cohabitation with S.S. to the detriment of the children. N.C. did not undertake parenting programs. She failed to keep a clean and tidy living accommodation for her children. She did not undertake any counseling even though she was encouraged to do so. Only on the doorstep of the trial did she get her apartment cleaned up. As the trial approached and she urged to present a plan of care for the return of the children, N.C. put together a plan with her mother, but that plan appears to have been arranged by others more than by N.C.

[23] The foster mother, J.B., reports that the children came to her as undisciplined persons. After two months of working with the children, Ms J.B. found that they developed into a routine of picking up their toys and clothes and eating on a regular schedule. They are delightful children.

[24] The state of the living conditions for these young children, now ages five and 3, presented a health and safety risk to them. They were not fed properly. Living in an environment of animal and human waste is alarming. N.C. exposed T. and B. to the risk of physical health hazards as well as the danger of objects falling onto them. The lack of direction to the children leads to a fear that they will be at considerable risk to their health in the future. As well, leaving the children to fend for themselves as they grow exposes them to a lack of parental guidance that is needed. The emotional harm of not having the foundation of guidance from mother may place the children at risk of missing emotional and psychological guidance. Parents and society owe it to young persons to reduce the risks of life as much as possible. N.C. is not likely to do so.

[25] Although N.C. and D.C. present a plan of care for T. and B., it is it too little too late?

Conclusion

[26] In conclusion, the children were in need of protection of the time of their apprehension. With respect to what disposition to make after a finding of the children being in need of protection, I am concerned that it would be irresponsible and dangerous to return the children to mother and grandmother. It is being suggested that the children be returned to their mother with

a co-parenting plan run by mother and grandmother. The track record for mother does not leave me with the impression that such a plan can work. I'm concerned that she would return to her historical pattern of not keeping a clean residence. Her residence was not messy in a minor way. Rather, it was dramatically filthy to the point that it was hazardous to the physical and emotional health of the children. Grandmother has had an historical track record of keeping a messy residence as well. Both mother and grandmother smoke tobacco products now outside the residence occupied by the children. The children have been in foster care since June 2003. In listening to the evidence given by J.B., the foster parent, I'm satisfied that the children have got along very well in the care of the Children's Aid Society. Ms J.B. advise that it took her about two months to get the children into a routine out of some orderliness in their lives. The plan of care presented by mother and grandmother is requesting that the court take a chance at returning the children to N.C. I am not satisfied that there is any assurance that the return of the children could be done safely. The interests of the children are paramount in this case. N.C. did not place the interests of the children in a paramount position when they lived with her. Rather, her wishes, her lifestyle, her casual approach to maintaining a clean and healthy environment for her children all demonstrate that the children came second. She has not undertaken parenting skills and training to any significant extent since the children have been in care. Nor has N.C. sought any psychiatric or psychological assistance if in fact she did experience any depression. There is no medical evidence to support a suggestion that N.C. was depressed thereby leading to her not to keep her residence in a healthy and safe condition for her children. The children now have got off to a good start in their lives. It would be a disservice to the children to back up and start over again without some solid foundation that it could be done successfully by living with mother and grandmother under the supervision of the Children's Aid Society. In reviewing all of the evidence presented, I am persuaded that there have not been significant changes in the circumstances of mother, grandmother and the children since June 2003 whereby the court should dispose of the application by returning the children to live with their mother. The changes presented during this trial are not shown to be likely to be sustained once the trial is finished. These children deserve better than what they have had.

[27] In reaching this conclusion, I rely on the analysis of the Supreme Court of Canada in C.M. and the Catholic Children's Aid Society of Metropolitan Toronto and the Official Guardian, [1994] 2 R.C.S. 165. There the Supreme Court focused on the best interests of the children as being the paramount concern in proceedings such as the one before me.

[28] Each child protection case is unique with its own facts. When a court reaches the end of a trial, the court must apply those facts to what is in the best interests of the children. The wishes of parents do not override what is best for the children. In the case before me, N.C.'s preferences do not become paramount. She has come to this trial years after the commencement of the involvement of the Children's Aid Society with a late plan of care and without addressing obvious needs for parenting training. It is too little too late unfortunately.

[29] It is ordered that the children become Crown wards without access to mother or the extended family. This will enable the children to be adopted and to advance in with their lives in a healthy and safe manner.

Justice B. Glass

Released: April 27, 2004

COURT FILE NO.: 153-03

DATE: 2004-04-27

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

Family, Youth and Child Services of Muskoka
(Children's Aid Society, District of Muskoka)

Applicant

- and -

N.C. & S.S.

Respondents

REASONS FOR JUDGMENT

Justice B. Glass

Released: April 27, 2004