Date: 20171103
Docket: CP13-01-14316
Indexed as: *Metis Child and Family Services v. P.F. et al.*
Cited as: 2017 MBQB 193
(Winnipeg Centre)

2017 MBQB 193 (CanLII)

COURT OF QUEEN'S BENCH OF MANITOBA
(FAMILY DIVISION)

B E T W E E N:

METIS CHILD, FAMILY AND COMMUNITY SERVICES,	)	Appearances:
petitioner,	)	Kris Saxberg and Jennifer Guiboche for the petitioner
- and -	)	Crystal Kennedy for the respondent P.F.
P.F, S.S. and R.L., respondents.	)	Douglas Mayer for the respondent S.S.
	)	R.L. Not present/not represented
	)	JUDGMENT DELIVERED: November 3, 2017

RESTRICTION ON PUBLICATION: Pursuant to s. 75(2) of *The Child and Family Services Act*, no press, radio or television report of this proceeding shall disclose the name of any person involved in the proceeding as a party or a witness or disclose any information likely to identify any such person.

THATCHER J.

Introduction

[1] The petitioner, Metis Child, Family and Community Services ("the Agency"), seeks permanent orders of guardianship with respect to three children C.S., M.S. and N.S.

[2] The respondent P.F. is the mother of all three children. R.L. is the father of C.S. S.S. is the father to M.S. and N.S. K.S. is the maternal grandmother of all three children and has applied for guardianship of all three children. K.S.'s guardianship application is not before me today.

[3] There are no prior temporary orders of guardianship.

The Law

[4] I am mindful of the salient provisions of *The Child and Family Services Act,* C.C.S.M., c. C80 (the "Act"), including the particulars of the Declaration of Principles:

> Declaration of Principles
>
> The Legislative Assembly of Manitoba hereby declares that the fundamental principles guiding the provision of services to children and families are:
>
> 1. The safety, security and well-being of children and their best interests are fundamental responsibilities of society.
>
> 2. The family is the basic unit of society and its well-being should be supported and preserved.
>
> 3. The family is the basic source of care, nurture and acculturation of children and parents have the primary responsibility to ensure the well-being of their children.
>
> 4. Families and children have the right to the least interference with their affairs to the extent compatible with the best interests of children and the responsibilities of society.

2017 MBQB 193 (CanLII)

5. Children have a right to a continuous family environment in which they can flourish.
6. Families and children are entitled to be informed of their rights and to participate in the decisions affecting those rights.

7. Families are entitled to receive preventive and supportive services directed to preserving the family unit.

8. Families are entitled to services which respect their cultural and linguistic heritage.

9. Decisions to place children should be based on the best interests of the child and not on the basis of the family's financial status.

10. Communities have a responsibility to promote the best interests of their children and families and have the right to participate in services to their families and children.

11. Indian bands are entitled to the provision of child and family services in a manner which respects their unique status as aboriginal peoples.

2017 MBQB 193 (CanLII)

[5] In assessing the Agency’s request for a permanent order, I am mindful of the provisions of the *Act*, and more particularly: s. 2(1) and 38(1):

Best interests

2(1) The best interests of the child shall be the paramount consideration of the director, an authority, the children's advocate, an agency and a court in all proceedings under this Act affecting a child, other than proceedings to determine whether a child is in need of protection, and in determining best interests the child's safety and security shall be the primary considerations. After that, all other relevant matters shall be considered, including

(a) the child's opportunity to have a parent-child relationship as a wanted and needed member within a family structure;

(b) the mental, emotional, physical and educational needs of the child and the appropriate care or treatment, or both, to meet such needs;

(c) the child's mental, emotional and physical stage of development;

(d) the child's sense of continuity and need for permanency with the least possible disruption;

(e) the merits and the risks of any plan proposed by the agency that would be caring for the child compared with the merits and the risks of the child returning to or remaining within the family;

(f) the views and preferences of the child where they can reasonably be ascertained;

(g) the effect upon the child of any delay in the final disposition of the proceedings; and

(h) the child's cultural, linguistic, racial and religious heritage.

. . . . .

Orders of the judge

38(1) Upon the completion of a hearing under this Part, a judge who finds that a child is in need of protection shall order

(a) that the child be returned to the parents or guardian under the supervision of an agency and subject to the conditions and for the period the judge considers necessary; or

(b) that the child be placed with such other person the judge considers best able to care for the child with or without transfer of guardianship and subject to the conditions and for the period the judge considers necessary; or

(c) that the agency be appointed the temporary guardian of a child under 5 years of age at the date of apprehension for a period not exceeding 6 months; or

(d) that the agency be appointed the temporary guardian of a child 5 years of age or older and under 12 years of age at the date of apprehension for a period not exceeding 12 months; or

(e) that the agency be appointed the temporary guardian of a child of 12 years of age or older at the date of apprehension for a period not exceeding 24 months; or

(f) that the agency be appointed the permanent guardian of the child.

2017 MBQB 193 (CanLII)

[6] In short, the burden of proof is on the Agency. The Agency must prove on a balance of probabilities that these children were in need of protection at the time of apprehension, that they remain in need of protection, and that their best interests are served by a permanent order.

Facts

[7] P.F. and S.S. met on Facebook in 2011 and commenced a dating relationship in late 2011 or early 2012. (The evidence is unclear and contradictory). It would appear that R.L has had very little contact with his son C.S. C.S. refers to S.S. as "dad".

[8] K.S. cares for two other children, her great niece and great nephew, and did so at all material times to this litigation. The children, and in particular C.S., have spent a great deal of time in the care of K.S. Some of that time has been in the sole care of K.S., and some of that time has been while P.F. resided in the home of K.S. C.S. has spent the majority of his life in either the exclusive or shared care of his maternal grandmother.

[9] In July 2012, the Agency became involved with the family with the aim to provide ongoing supports and services for the family, to further assess the relationship of P.F and S.S., to assess P.F's parenting abilities, and to assist P.F. in obtaining suitable housing.

[10] The conflict between the three parties to this litigation, P.F., S.S. and K.S. primarily began in 2012 and escalated thereafter. Much of the conflict centered around finances, K.S.'s disapproval of P.F.'s relationship with S.S., and what

2017 MBQB 193 (CanLII)

seems to have been a general feeling by the parents that K.S. was working to sabotage their attempts at parenting.

[11] On February 11, 2013, Yard J. pronounced an interim guardianship order with respect to C.S. in favour of K.S. By order of Rivoalen A.C.J. on May 25, 2015, K.S. surrendered guardianship of C.S., and placed the child back into the care of P.F. In April 2013, P.F. and K.S. moved temporarily to Ontario. By this time, P.F. was pregnant with M.S. and the Agency had issued a birth alert in the Province of Manitoba. A referral was made to the Children's Aid Society ("CAS") in Barrie, Ontario for ongoing services. S.S. remained in Winnipeg, Manitoba.

[12] M.S. was born in Ontario on May 20, 2013. CAS was involved with P.F. both before and after M.S.'s birth. At no point was M.S. apprehended by CAS.

[13] While in Ontario, P.F. continued to live with K.S. In November 2013, the family relocated to Winnipeg. CAS had advised the Agency that P.F. was making progress and working with a family resource worker. CAS recommended that the family remain in Ontario. The reason for the return to Manitoba is not clear. P.F. indicates that the return was to attend a funeral. P.F. contends that CAS was urging P.F. to move out of K.S.'s home and expressed concerns with respect to K.S.'s gambling and suspected that she was financially taking advantage of a family member. P.F. states that K.S. was fleeing CAS involvement.

[14] M.S. was apprehended from P.F. in December 2013 when P.F. attended to the hospital with M.S. who presented as dehydrated and requiring I.V. fluids. P.F. indicated at the time that she did not intend to return with M.S. to K.S.'s

2017 MBQB 193 (CanLII)

home, which led to M.S. being apprehended and placed with K.S. P.F. eventually returned to the home of K.S.

[15] The relationship between P.F. and K.S. continued to deteriorate. In January 2014, P.F. was temporarily kicked out of K.S.'s home. The Agency took the position that M.S. would stay with K.S., with or without P.F. P.F. again returned to K.S.'s home.

[16] Two weeks later, P.F. again moved out of K.S.'s home and into the home of S.S. M.S. and C.S. remained with K.S.

[17] P.F. and S.S. were granted escalating visitation until M.S. was eventually returned to the parents on November 26, 2014. C.S. remained in the care of K.S.

[18] N.S. was born December 18, 2014. N.S. was not brought into Agency care until February 21, 2016.

[19] In February 2015, K.S. filed an application seeking guardianship of M.S. and N.S., in addition to her already pending application for C.S. These applications are not before me and remain a live issue for another day.

[20] On or about July 1, 2015, S.S. was charged with assaulting P.F. Both parties deny the assault and indicate that P.F.'s bruising was a result of a "trip". Unknown parties found one of the children unattended in the street at approximately 2:00 a.m. and essentially rescued the child.

2017 MBQB 193 (CanLII)

[21] On August 28, 2015, C.S. was returned to P.F.'s care pursuant to the order of Rivoalen A.C.J. granted May 25, 2015. By now, all three children were in the care of P.F.

[22] Ten days later S.S. was charged with breaching the no contact order between himself and P.F. when the police found him in P.F.'s home. P.F. initially lied to the police, denying that S.S. was in the home, but S.S. was located in a bedroom.

[23] On November 5, 2015, the parents (both present despite the no contact order) signed a contract between themselves and the Agency, which seems to acknowledge the ongoing contact between parents. The contract essentially states:

1. that there is to be no further domestic violence or consumption of intoxicants by S.S.;
2. both parents were directed to cooperate with the Agency and comply with programming requests, and;
3. P.F. was to take steps as were necessary to have the no contact order removed. Both parents are warned that if they continued to have contact while the no contact order was in place, "they [would] do so at their own risk."

[24] Over the next two to three months, Agency staff indicated that things were better in the P.F./K.S. home. The home was generally cleaner and there

2017 MBQB 193 (CanLII)

was more structure. The Agency worker testified that P.F.'s parenting was much improved with S.S. in the home, and that S.S. "held the family together".

[25] On February 19, 2016, K.S.'s application for interim guardianship of the children was heard by Rivoalen A.C.J. Agency counsel appeared and indicated that the Agency supported P.F. having the children over the grandmother. Agency counsel indicated that there were no concerns with respect to P.F. Agency staff would testify that counsel ought to have advised that the Agency still had ongoing concerns with respect to P.F., but that P.F. was still supported.

[26] Immediately after K.S.'s interim application for guardianship was denied, K.S. picked up C.S. for a period of pre-scheduled access. Shortly after, K.S. brought C.S. to the emergency room where C.S was observed to have a "fresh" bruise that was consistent with his ear having been pinched. K.S. told the hospital staff that S.S. was the abuser. Shortly thereafter, K.S. told ANCR investigators that S.S. was the abuser. When asked by ANCR, K.S. denied that she had an interest in the custody of the children and specifically stated that she had not applied for guardianship.

[27] All three children were formally apprehended on February 21, 2016, and have remain under apprehension, placed in the care of K.S.

[28] On April 21, 2016, the Agency abuse investigation into C.S.'s injuries was deemed "inconclusive". Notwithstanding, the Agency has maintained its apprehension.

The Issues

2017 MBQB 193 (CanLII)

Were the children in need of protection at the time of apprehension?

[29] The Agency contends that C.S.'s bruised ear was a suspicious injury, likely occurring in the care of P.F. and S.S., thus elevating the concern that the children could be subject to physical abuse at some time in the future. Further, the Agency contends that even without C.S.'s bruising, it was justified in apprehending the children as the Agency was not aware of all the circumstances of S.S.'s past and that the information only became known to this Agency once ANCR became involved. Apparently, the petitioner, as a receiving Agency, is not privy to all of the information that ANCR maintains.

[30] First, the particulars of C.S.'s bruising. K.S. was having access to C.S. every Wednesday and every second weekend. As well, she spoke to C.S. on the phone every evening. On February 18, 2016, the Agency reported that K.S. had reported that C.S. had stated that "he hurt my ear". There was no indication as to who had hurt the child's ear.

[31] On February 19, 2016, K.S.'s application for interim guardianship of C.S. was heard by Rivoalen A.C.J. and dismissed, likely at least in part due to Agency's counsel's submission that the Agency had no concerns about P.F.'s parenting and further that the Agency supported P.F. The Agency supervisor would later testify that Agency counsel was in error when she advised that the Agency had no concerns with respect to P.F. The Agency did have longstanding concerns concerning P.F., but presumably not enough to apprehend.

2017 MBQB 193 (CanLII)

[32] Later that same day, K.S. picked up C.S. for her regularly scheduled weekend access. K.S. testified that she noticed a bruise on either side of C.S.'s ear. She accordingly took C.S. to the hospital and told hospital staff that she believed that S.S. had abused C.S. There were initial indications that the bruise appeared to be "fresh" and was likely timed to have occurred while in the care of P.F. and S.S. The diagnosis was that the ear bruising was likely non-accidental trauma. In other words, the ear had been pinched. Dr. Tavis Bodnarchuk of the Child Protection Centre later provided a brief report indicating that bruises cannot be dated. At no time did C.S., a child who was verbal at the time, make any disclosure of abuse. In April 2016, ANCR would deem the allegations of abuse "inconclusive".

[33] There was no evidence or suggestion that the bruise was anything other than a pinching of the child's ear. There was however, very little evidence to suggest who had hurt C.S.'s ear. C.S. had been in the care of babysitters the night previous to attending the hospital. Immediately before attending to the hospital, C.S. had been in the care of K.S. who did not mention that her application for interim guardianship had just been dismissed by the court hours earlier, and more than that, denied to ANCR that she had applied for guardianship at all. S.S. testified that K.S. would discipline her children by ear pinching. There was no such evidence from P.F. who had grown up in K.S.'s household. In fact, P.F. testified that she did not believe that K.S. had injured C.S.

2017 MBQB 193 (CanLII)

[34] C.S. has been described as "hyperactive". He had access to other children. It is possible that C.S. was injured by rough play. It is possible that he was injured by an adult, but I have no evidence that this was the case. More than that, there is no evidence to suggest that any one parent or adult is more or less likely than another to have injured C.S. ANCR conducted an abuse investigation and was unable to identify a perpetrator.

[35] The Agency states that even if S.S. did not bruise C.S., the Agency did not know about S.S.'s criminal past, and had they known, the children would never have been in the home of S.S. or in a home that S.S. frequented.

[36] S.S.'s record of criminal involvement is significant and at times violent. S.S. was confronted with his criminal record during cross-examination and was also extensively cross-examined on Winnipeg City Police occurrence reports, which were filed as business records by consent pursuant to s. 49 of *The Manitoba Evidence Act*, C.C.S.M. c. E190.

[37] I am mindful of the provision of s. 49(4) of *The Manitoba Evidence Act* :

> Surrounding circumstances
>
> 49(4) The circumstances of the making of any writing or record to which reference is made in subsection (2), including lack of personal knowledge by the maker, may be shown to affect its weight, but the circumstances do not affect its admissibility.

[38] The police occurrence reports at times include direct observations of attending officers. At times they contain hearsay statements, and at times double and triple hearsay statements. Police records are often times quite

2017 MBQB 193 (CanLII)

helpful and illuminating in these types of cases. However, sometimes information can be lost or distorted as facts are re-told. Sometimes people lie to the police, and sometimes people distort events for their own purposes. The court must always be careful as to the weight given to those records, particularly where the records go beyond the officer's direct observations.

[39] To further complicate the use of police records in this case, and particularly the early records, it appears that S.S. has an identical twin whose name is very similar to S.S.'s It was conceded by the Agency that there is some concern that some of the occurrence reports may actually refer to S.S.'s twin brother. I found S.S. to have been reasonably forthcoming with respect to the police incident reports. He testified that two violent incidents in 2007 were actually his brother. In light of the admissions that he would make with respect to his more recent entanglements with the law, I tend to believe S.S. on this point.

[40] S.S.'s list of police involved occurrences is lengthy:

- In 2007, while intoxicated, S.S. threatened to kill at least one person. He was convicted of uttering threats and intimidation. He also indicated to police at that time that he needed a "psychiatric doctor" and some assistance with his anger.
- In July 2008, S.S. was charged with aggravated assault. He was alleged to be the lookout while accomplices hit a victim 20 times with a baseball bat causing serious injuries. S.S. denied the allegations.

2017 MBQB 193 (CanLII)

The charges were stayed after S.S. spent 26 months in pre-trial custody.

- On June 21, 2010, S.S., while intoxicated, was accused of sexually assaulting a 14 year old girl. The charges of sexual assault were stayed and for reasons I am not privy to, S.S. was not placed on the Child Abuse Registry. S.S. testified that the person that committed the assault was another named individual who was a member of the Manitoba Warriors. It is noteworthy that the victim was found with gang signs written on her face and that there is no evidence that S.S. is or was a gang member. S.S. was however convicted of uttering threats to kill a police officer. S.S. did not deny making the threats at this trial.
- On March 7, 2011, there was an incident of domestic violence concerning S.S.'s family of origin. Police were called to a fight between two individuals (one of which was S.S.'s twin) and S.S. No charges were laid as there was no cooperation with police.
- On June 21, 2011, it was alleged that S.S. while intoxicated, assaulted his mother. When the police arrived, they were unable to obtain cooperation with respect to their investigation. There were indications of a drinking party.
- On October 27, 2011, bar staff at the Northern Hotel described S.S. as irate, intoxicated, and requested police assistance. S.S. was

2017 MBQB 193 (CanLII)

detained under *The Intoxicated Persons Detention Act*, C.C.S.M. c. I90 and taken to the detoxification centre. S.S. testified that he believes that the individual involved was likely his brother as he has no recollection of same. He did admit that he has been in the "drunk tank" before and that it was possible that it had been him, but that he simply did not remember.

- On December 27, 2011, S.S. and his brother were approached by police. It is alleged that S.S. and his brother attempted to fight the officers which led to S.S. being tasered. S.S. was charged with a series of offences including assaulting a police officer. The proceedings were withdrawn by the Crown (not stayed). S.S. testified that the police knew who he was and had aggressively attacked him.
- On February 9, 2012, a report was made to the police that S.S. and his brother were fighting. The matter was resolved before police attended.
- On February 25, 2012, police are requested to remove S.S. from his mother's home. S.S. was intoxicated and arrested under *The Intoxicated Person Detention Act*.
- On November 16, 2012, S.S. leaves a threatening voicemail for Agency staff. Amongst threatening comments in the voicemail is "… [Y]ou're just fucking making things worse, you dumb bitch. So I will

2017 MBQB 193 (CanLII)

be coming to see you man, cause I am really pissed off with you, Natalie." S.S. testified that he did leave the voicemail, and further, that his intent was to intimidate the Agency worker.

- On December 30, 2012, S.S. is alleged to have assaulted his landlord. S.S. denied same at trial.
- February 6, 2013, S.S. is arrested under *The Intoxicated Persons Detention Act*. While in transit, S.S. threatened the officers and was convicted of same. At this trial, S.S. testified that he did not recall the threats but believed that he had made them.
- On July 6, 2013, S.S. is alleged to have committed an assault and was charged with same. Charges were stayed.
- On January 21, 2014, S.S. again threatens the worker. S.S. testified that he did not remember the threat but that if he did, he apologized.
- On February 1, 2014, S.S. is alleged to have threatened K.S. S.S. denied this and no charges were laid.
- On June 6, 2015, S.S. is charged with robbery. At trial S.S. admitted that he gave the victim, his sister-in-law, a "little shove". The victim was transported to the Health Sciences Centre for treatment.
- On July 2, 2015, P.F. and S.S. attend to a residence at 2:30 a.m. with M.S. (2 years old) and N.S. (7 months old). P.F. was sober – it is not a contested point that P.F. does not drink or abuse substances

2017 MBQB 193 (CanLII)

– and S.S. who admitted to being intoxicated. A caller calls police indicating that they had found a baby in a stroller in the street by herself. The caller essentially rescued the child. P.F. allegedly told police that S.S. had punched her in the nose three times with a closed fist, causing her nose to bleed and indicated that she now feared S.S. At trial both S.S. and P.F. minimized the incident and alleged that P.F. had merely tripped on the kitchen floor striking her nose on a kitchen cabinet. S.S. testified that the children were left in the street while he rushed to the aid of P.F. There was no explanation for why S.S. was biking with the children at 2:30 a.m. while intoxicated.

- On September 5, 2015, the police attend to P.F.'s home. P.F. denies that S.S. is present but the police report indicates S.S. was found hiding in a closet. S.S. testified that he was not hiding but was merely in the bedroom.

[41] The Agency contends that it did not know the full particulars of S.S.'s history when it entered into the agreement with S.S. and P.F. on November 5, 2015, to allow the parents to have contact (admittedly contrary to an existing no contact order).

[42] I find that the parents did not materially breach the November 5, 2015 agreement with the Agency. There was no suggestion of S.S. being intoxicated between November 2015 and February 21, 2016 (the date of apprehension).

2017 MBQB 193 (CanLII)

There is no suggestion of domestic violence. The Agency worker testified that things were running well in the home and that S.S. was holding the family together.

[43] As for the contention by the parents that the Agency essentially knew about S.S.'s criminal record, I find this to be partially true. However, the court is not bound by an agreement between the Agency and the parents. What the Agency knew, and when they knew it is not material at this point. It is clear that the Agency believed that these children were in need of protection on February 21, 2016. I concur. The violent criminal history of S.S., including but not limited to his convictions are serious and consistently volatile in nature.

[44] S.S. testified at trial that he does not drink often but that when he does he "gets in trouble". P.F., seemingly excusing S.S.'s conduct, testified that trouble finds S.S. when alcohol is involved. S.S. testified that he knew that alcohol was a trigger for violent conduct but notwithstanding S.S. continued to consume alcohol from time to time with predictable consequences. So long as he consumes alcohol, S.S. is a danger to others, including children in his care.

[45] The period between November 5, 2015 and February 21, 2016 is a short one. It may be that the household was doing better, but upon a review of the evidence, there was no substantial gap in S.S.'s violent acts, nor did he take steps to end his use of alcohol in the medium or long-term. Whether or not one finds that S.S. was involved in injuring C.S.'s ear, it cannot be denied that S.S. is routinely violent to those close to him. Whether the children were submitted to

2017 MBQB 193 (CanLII)

violence or not, it was clear that S.S., at the time of apprehension, was unable to control his capacity for violence and further that the violence had been directed against not only P.F. but also the police and social workers on multiple occasions. The mere fact that the children here had not yet been the direct victims of violence ignores the terrible effects of domestic violence on the children who are likely to witness same. All of this suggests that S.S. was not in control of his anger at the time of apprehension, and as such, P.F.'s insistence that she parent with S.S. places these children at risk.

2017 MBQB 193 (CanLII)

Were the children in need of protection at the time of the hearing?

[46] In short, yes. S.S. allegedly threatened the Agency supervisor on May 6, 2016. K.S. obtained a protection order against S.S. on June 7, 2016.

[47] On September 24, 2016, P.F. called 911 and said "he is coming" and the phone was disconnected. When the police arrived P.F. denied that S.S. was abusing her. She did however say that S.S. was drunk and she was afraid that he would hurt her.

[48] In January 2017, K.S. alleges that P.F. told her that S.S. had beaten her up.

[49] On February 19, 2017, P.F. and S.S. are involved in a fight at S.S.'s brother's home. Attending police described a large amount of blood at the scene. P.F. and S.S. attended a pre-trial the next morning with black eyes.

[50] On July 1, 2017, police were called to the Northern Hotel to deal with aggression by S.S. S.S. told police that he wanted to fight them.

[51] S.S.'s trend towards violence, particularly while intoxicated, continued post- apprehension which is tragic as S.S. is likely the only father figure that these children have had or are likely to have. S.S. presents as naïve and largely likeable, but his capacity for violence places these children at risk. Counsel for P.F. correctly points out that P.F. has not been given a credible opportunity to parent on her own. I do not disagree. However, she continues to intend to parent with S.S. and as such, her life choices are placing these children at risk.

[52] I accordingly find that the children remain in need of protection.

Remedy

[53] The Agency seeks a permanent order. S.S.'s police record and his own evidence clearly sets out a need for alcohol treatment and therapy to assist him with his terrible experiences from his family of origin. Unfortunately, S.S. has not seriously undertaken either of these steps. At present, P.F. is showing no inclination to parent on her own. I would note in passing that if P.F. would attempt to do so, it would seem unlikely that she will be successful so long as K.S. is involved in the plan. K.S.'s application for guardianship is not before me, but if it were, I would point out that Agency staff have described K.S.'s involvement as "meddling". I have very serious concerns to the effect that K.S. had a hydro bill in her daughter's name, starting when P.F. was 12 year's old and

2017 MBQB 193 (CanLII)

that this went on for as much as a decade. It should be noted that P.F.'s "last chance" to parent was terminated by the Agency over a concern that her hydro had been cut-off. That event was allegedly as a direct result of the hydro account run up by K.S. over the years when P.F. was still a child. It was then K.S. who advised the Agency that P.F.'s power had been turned off, resulting in the children being placed into the care of K.S.

2017 MBQB 193 (CanLII)

[54] These parents are far from being ready to parent, but I have serious concerns with respect to the Agency's plan.

[55] K.S.'s husband, A.S., was convicted in 1985 of attempting to have sex with a girl under 14. Six years later, in 1991, A.S. was convicted of sexual interference. I have been given no details as to the circumstances of these convictions. A.S. did not testify.

[56] I am also not yet convinced that K.S. is in a position, or is willing to be in a position to protect these children from A.S. if necessary. I have no idea as to whether A.S. is a risk to these children. However, I am mindful that K.S. was largely dismissive of her husband's convictions and declared in cross-examination that "everyone has a past".

[57] K.S. testified that her and her husband are separated and have been for quite some time and are not divorced only because K.S. is religiously opposed to divorce. That evidence flies in the face of the evidence of P.F. who testified that other than a short time when she was seven years old, her parents have always been together. She testified that she had been told since she was a young child

to say that her father, a contractor, does not live with them when in fact he did. She testified that he continues to live there now and that the separation is merely a construct in order to facilitate the family's long-established pattern of defrauding social assistance. I make no findings as to these allegations, but I am concerned that there is a ring of truth. Of further concern, A.S. has been found to be staying at the home of K.S. The Agency supervisor testified that she wrestled with the placement of the children at K.S.'s home because of A.S.'s past but was also mindful of the pressure the courts are placing on agencies to place children with family whenever possible. She testified that she relied on the fact that, to her knowledge, A.S. had not been found to have been staying with K.S. In fact, likely unbeknownst to her, A.S. had been found in the residence of K.S. on more than one occasion in the evening. It was no secret that A.S. was attending to the residence during the day, but he was not to be staying there overnight. I believe that it is likely that he did so on occasion. While ANCR did attend to the home numerous times to confirm that he was not there, there is no denying the police occurrence reports which indicate that on occasion he was.

[58] The Agency's plan when this matter first went to trial in April 2017 was to have K.S. to continue to act as the placement for all three children. Presumably, once there was a permanent order, the Agency would deal directly with K.S. with respect to her guardianship application, without interference from the parents.

[59] In support of the plan, the Agency relied on the report of Dr. Ducharme dated April 3, 2017. Dr. Ducharme was not called to testify, but his reports were

2017 MBQB 193 (CanLII)

tendered. In Dr. Ducharme's April 2017 report he found that A.S. was likely of a low risk to reoffend based upon a lack of reported offending behaviour since 1991. It is noteworthy that Dr. Ducharme did not interview S.S. or P.F. as the parents had declined to take part in the assessment process, and did not have any independent information with respect to A.S.'s second charge. Further it does not appear that Dr. Ducharme utilized any actuarial forensic tools to assess risk.

[60] In the time between the trial starting in April 2017, and its continuation in in September 2017, the Agency's plan changed, in large part due to a further report by Dr. Ducharme dated August 21, 2017. Dr. Ducharme noted with concern that A.S. had been sighted on three separate occasions driving in an area of the city known to be frequented by street workers. Two of those occasions occurred in November 2016, and another early in 2017. Dr. Ducharme found the behaviours very concerning in light of A.S.'s history of sexual offending. Dr. Ducharme noted that it has been his experience when such behaviour occurs, there are likely few documented incidents that are known, while the behaviour in question is much more frequent, but is simply not being detected on all occurrences. Dr. Ducharme changed his recommendations to support K.S. in her application for C.S. but not A.S. It was also recommended that C.S. and M.S. be moved out of K.S.'s home, at least in part due to concerns that K.S. may be overwhelmed.

2017 MBQB 193 (CanLII)

[61] The Agency essentially has changed its plan to mirror the recommendations of Dr. Ducharme.

[62] I am not satisfied of the plan proposed by the Agency for the following reasons:

- A.S.'s concerning behaviours occurred when this matter was heading to a contested trial. Generally speaking, one may assume that people are on their best behaviour when they believe that their actions are likely to be the subject of litigation.
- I am concerned that A.S. has resided in K.S.'s home throughout, and that the recent period outside of the home may be temporary. I note that A.S. was found to not be present in K.S.'s home during most unannounced Agency inspections, but I also note that from time to time he was present in the early morning hours on a workday. This activity suggests a possible pattern of evasion.
- I am not persuaded that K.S. is committed to safety planning around A.S. Typically when individuals are committed to protecting children from offenders, alleged or proven, they do not attempt to excuse the offenders past as K.S. has done.

[63] If a permanent order is pronounced, these children will be beyond future judicial oversight. A vital component of any permanent order is the Agency plan. The court must be satisfied that the Agency is committed to taking realistic and actual steps that will reasonably provide for the children. I am not convinced

2017 MBQB 193 (CanLII)

that this is the case. The Agency must present a plan that includes a complete risk assessment of A.S. and details of his criminal convictions before this permanent plan can reasonably be considered.

[64] There is no doubt that C.S. is bonded to K.S., and there is no serious suggestion that K.S. has not provided good care to C.S. I also note that C.S.'s special needs are a strong factor in the Agency supporting his placement with K.S. I agree. Minimal disruptions to C.S. is very important. But the court must also see to the child's need for safety. Hence, a formal risk assessment of A.S. is crucial.

[65] Usually when the Agency plan is found to be deficient, the trial is adjourned to allow for the formation of a new plan. That is not possible in this case as the development of an appropriate risk assessment and the procurement of A.S.'s criminal record will take time. The Agency has placed these children in a home of a twice convicted sex offender without a full risk assessment. A.S. may not be a danger, and one genuinely hopes this to be the case, but where the Agency has failed to adequately vet its plan, the court must do so.

[66] I find that the children were in need of protection both at the time of apprehension and today. To allow the Agency to further plan for these children, I order a six month temporary order of guardianship.

____

J.

2017 MBQB 193 (CanLII)

2017 MBQB 193 (CanLII)