

## WARNING

The court hearing this matter directs that the following notice should be attached to the file:

This is a case under Part III of the *Child and Family Services Act* and is subject to subsections 45(8) of the Act. This subsection and subsection 85(3) of the *Child and Family Services Act*, which deals with the consequences of failure to comply with subsection 45(8), read as follows:

**45.—(8)** 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, or the child's parent or foster parent or a member of the child's family.

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**85.—(3)** A person who contravenes subsection 45(8) (publication of identifying information) or an order prohibiting publication made under clause 45(7)(c) or subsection 45(9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or to both.

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SUPERIOR COURT OF JUSTICE  
FAMILY COURT

**B E T W E E N :**

**CHILDREN'S AID SOCIETY OF OTTAWA-CARLETON,**  
*Applicant,*

— AND —

**Mrs. T. and Mr. T.,**  
*Respondents.*

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Before Justice Jennifer A. Blishen

Heard on 7 June 2000

Reasons for Judgment released on 12 June 2000

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**CHILD PROTECTION — Interim care and custody — Grounds — General — Introduction of new statutory test — In wake of amendments to *Child and Family Services Act* that took effect in March 2000, where children's aid society seeks interim care and custody order that places child with person other than parent, it would need to prove, on credible and trustworthy evidence, reasonable grounds to believe in real possibility that, if returned to care of parents, child would more probably than not suffer harm — In addition, society would need to prove that, if returned to parents, child could not be adequately protected by terms and conditions of interim society supervision.**

**CHILD PROTECTION — Interim care and custody — Grounds — Reasonable grounds to believe in inadequate protection for child if returned — Young mother was quadriplegic, confined to wheelchair and totally dependant upon husband who was overwhelmed simply in caring for her, let alone for newborn child — Father needed respite and assistance but parents had little success in getting those services on their own — Children's aid society provided homemaker and linked up parents to public health nurse who visited home regularly, although father limited visiting homemaker to household chores, laundry and some of**

hygiene concerns but would not permit homemaker to help with care of mother or in other ways — What young couple needed absolutely was attendant or respite care, but this service would not become available for another 6 months and neither society intervention nor court order could materialize this service any earlier — Thus, services available in parents’ home at present were simply inadequate to protect newborn infant from risk of harm — For this and other reasons, court placed child into temporary care and custody of maternal grandmother subject to generous supervised access to parents.

**CHILD PROTECTION — Interim care and custody — Grounds — Reasonable grounds to believe in risk that child is likely to suffer harm — Young mother was quadriplegic, confined to wheelchair and totally dependant upon husband who was overwhelmed simply in caring for her, let alone for newborn child — Father needed respite and assistance but parents had little success in getting those services on their own — Children’s aid society provided homemaker and linked up parents to public health nurse, but these people reported that apartment was unsanitary with significant hygiene concerns — There was also evidence that father had difficulty in managing stress and frustration and tended to react in anger — Court found reasonable grounds to believe that risk existed that went beyond speculation that newborn infant would likely suffer physical harm if returned to his parents’ care — For this and other reasons, court placed child into temporary care and custody of maternal grandmother subject to generous supervised access to parents.**

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**STATUTES AND REGULATIONS CITED**

*Child and Family Services Act, R.S.O. 1990, c. C-11* [as amended], [subsection 1\(1\)](#), [subsection 51\(3\)](#), [subsection 51\(7\)](#).

*Child and Family Services Amendment Act (Child Welfare Reform), 1999, S.O. 1999, c. 2.*

**AUTHORS AND WORKS CITED**

*Black’s Law Dictionary*, 7th ed. (St. Paul, Minn.: West Group, 1999), *sub verbo* “risk”.

*The Concise Oxford Dictionary*, 10th ed. (Oxford: Oxford University Press, 1999), *sub verbis* “likely” and “risk”.

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Martha A. Tweedie ..... for the applicant society  
George MacPherson ..... for the respondent mother  
Danielle B. Dworsky ..... for the respondent father

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**JUSTICE J.A. BLISHEN:—**

**1: INTRODUCTION**

[1] On 20 April 2000, the children's aid society received a referral from a social worker at the Civic Hospital, expressing concerns regarding a young couple. Mrs. T. was reported to be a quadriplegic, suffering from cerebral palsy, who was confined to a wheelchair. She was almost eight months pregnant and it was reported that she was fully dependent on her husband. No other family or community supports were in place. Mr. T., a 22-year-old young man, appeared to be overwhelmed with the full-time care of his wife. The social worker reported poor personal hygiene and unsanitary living conditions; inappropriate housing that was not wheelchair-accessible or adapted; and, alleged physical mistreatment of Mrs. T. by her husband.

[2] Upon receiving the referral, the children's aid society met with the parents and the hospital social worker. A number of referrals were made for community assistance. Mr. and Mrs. T. were very co-operative with the society and appeared motivated to accept any services or assistance.

[3] The children's aid society immediately referred the couple to the Healthy Babies Program for some prenatal support. However, only a few weeks remained before the baby was due. A public health nurse was also contacted and she commenced involvement on 19 May 2000. The Civic Hospital made a referral for homemaker service, which began two hours per week on 11 May. A referral was also made for attendant care in the home in order to assist Mr. T. with the ongoing daily care of his wife and the newborn child. Unfortunately, information received was that no professional attendant care would be available until January 2001.

[4] D.T. was born on 26 May 2000. Based on the concerns and perceived risk to the infant along with a lack of family or community supports, the children's aid society apprehended D.T. on 31 May 2000 while he was still at the hospital. A protection application was filed requesting a three-month supervision order to the maternal grandmother, Mrs. M. Mrs. M. agreed to assume temporary care of her grandson and consented to this order. Both parents contested the application and when the matter was brought before the court on 5 June, requested an immediate care and custody hearing. The application was adjourned to 7 June for the hearing with an interim supervision order made to the maternal grandmother without prejudice, with access to the parents two times per day for two hours on each visit in order to enable the mother to continue breast-feeding.

## 2: TEST

[5] Under the *Child and Family Services Act*, R.S.O. 1990, c. C-11, as amended, any time a hearing is adjourned, the court must make a temporary order for care and custody. In this case, the children's aid society is requesting an order that D.T. be placed in the temporary care and custody of his maternal grandmother subject to the society's supervision. The parents request the immediate return of D.T. to their care.

[6] Under subsection 51(3) of the *Child and Family Services Act*, the onus is on the children's aid society to satisfy the court that there are reasonable grounds to believe that there is a risk that the child is likely to suffer harm and that the child cannot be adequately protected by an order returning the child to parental care with or without an interim supervision order.

Citing documents (1)

[7] Prior to the amendments<sup>[1]</sup> of 31 March 2000 to the *Child and Family Services Act*, the test under subsection 51(3) was different. The society had to satisfy the court that there were reasonable and probable grounds to believe that there was a **substantial** risk to the child's health or safety and that the child could not be adequately protected by an interim supervision order. The new subsection changes this standard. The modifier "substantial" has been removed in considering the issue of risk. However, "risk" is grammatically linked to "likely". In my view, the word "likely" suggests at least more probable than not. *The Concise Oxford Dictionary*, 10th ed., 1999, defines **likely** as "such as well might happen or be true". Therefore, the harm must be more than possible. It must be more probable than not.

Citing documents (2)

[8] The term "risk" is now left unmodified. *The Concise Oxford Dictionary* includes as a definition of **risk** "the possibility that something unpleasant might happen". *Black's Law Dictionary*, 7th ed., 1999, defines **risk** as "the chance of injury, damage, or loss". Thus, a risk of undefined proportions involves a chance or a possibility. However, in my view, this chance or possibility must be real and not just speculative.

Citing documents (3)

[9] At a care and custody hearing, the risk of likely harm does not have to be proven on the balance of probabilities and the court can admit evidence that is considered "credible and trustworthy"; see subsection 51(7).

Citing documents (1)

[10] Therefore, the test in my view is as follows. The children's aid society must establish, on credible and trustworthy evidence, reasonable grounds to believe that there is a real possibility that, if the child is returned to his or her parents, it is more probable than not that he or she will suffer harm. Further, the society must establish that the child

cannot be adequately protected by terms and conditions of an interim supervision order to the parents.

Citing documents (18)

### **3: APPLICATION OF THE TEST TO THE FACTS**

#### **3.1: Risk of Likely Harm**

[11] Mrs. T. is disabled. She suffers from cerebral palsy, is confined to a wheelchair and requires ongoing assistance in order to care for herself. During submissions, counsel for the father repeated the phrase “incontinence is not incompetence”. I found the use of such rhetoric inflammatory and of no relevance. The use of such a phrase serves only to mislead and distract from the real focus of the hearing which is the right of this newborn baby to live in a safe environment free from risk of harm. The fact that Mrs. T. is disabled does not in any way mean that she is unable to parent. She is a capable young woman who has completed community college courses and worked part-time at a community centre day care. Although she is confined to a wheelchair, she does have some mobility and is able to accomplish some tasks on her own. Nevertheless, Mrs. T. does require substantial, daily assistance in order to be able to meet the needs of her infant child. When D.T. was born, the responsibility for the care of both Mrs. T. and the baby rested almost entirely with Mr. T. Visiting homemaker services for two hours per week and the involvement of a public health nurse were the only outside services in place that continue to date.

[12] Given this situation, is there a risk of probable harm to D.T.?

[13] There is evidence that Mr. T. has been overwhelmed with caring for his wife alone. The children’s aid society’s affidavit evidence indicated that Mr. T. admitted this to both the Civic Hospital social worker and the children’s aid society social worker. In fact, he indicated that he needed respite and assistance and that the couple had little success in obtaining services on their own. Mr. and Mrs. T. reside in an apartment that is not wheelchair-accessible nor adapted for Mrs. T. In addition, Mr. T.’s father, who is visually impaired, resides in the same building and is also somewhat dependent on his son.

[14] In early May, the children’s aid society social worker noted that the apartment was unsanitary and there were significant hygiene concerns. Mr. T. was handling not only the day-to-day care of his wife but was also attempting to clean the apartment and to fulfill all other necessary chores. The situation did improve somewhat throughout the month of May, after homemaker services were provided to the couple. Unfortunately, Mr. T. would not allow the homemaker to assist with anything other than household chores and laundry. Although the hygiene concerns have been somewhat alleviated, a

nurse who visited the home on 3 June to assist Mrs. T. with breastfeeding did, once again, raise concerns about hygiene. She indicated that, given the lack of hygiene in the home, there were concerns regarding possible contamination of the breast milk. A newborn baby is obviously extremely vulnerable, making hygiene and sanitation perhaps more important than for an older child.

[15] The children's aid society argues that Mr. T. has a significant anger management problem. There is evidence that Mrs. T. reported to the hospital social worker that her husband "taps" her when he gets frustrated or that he will leave the apartment and go for a walk in order to calm down. While leaving the situation may be an appropriate mechanism for coping with frustration or stress, it would be inappropriate to ever leave Mrs. T. alone with D.T. Mrs. T. also expressed some concern to the children's aid society social worker that, if the child was apprehended, her husband might "lose it" and harm himself or others.

[16] Mr. T. was refused admittance to the operating room when his wife gave birth by Caesarean section. This is hospital policy. However, Mr. T. became extremely angry and agitated, raising his voice and swearing at hospital staff. Similarly, when D.T. was apprehended, he became very agitated and angry. This is certainly understandable under the circumstances, but his reaction does cause some concern given some of the statements that he made at that time. He threatened to take D.T. out of the hospital and stated that no one would stop him from leaving with his son. He further stated that he would have the doctor remove the staples from Mrs. T.'s C-section and he would take her home right now. Mrs. T. did report to the children's aid society that building security and the police have been called because of arguments between the couple. Finally, Mr. T. acknowledged to the public health nurse that he had some anger management difficulties.

[17] The children's aid society argues that there is evidence of Mr. T.'s physically abusing his wife. It bases this argument on Mrs. T.'s report that he "taps" her when he's frustrated and on reports of physical and verbal abuse from an anonymous friend. I do not find the latter information credible or trustworthy. There are numerous letters of support from friends who have known the couple for some time and there are no reports of any physical altercations or abuse. Therefore, I am not prepared to make a finding of fact at this stage that there has been any physical abuse perpetrated by Mr. T. on his wife. However, I do find credible and trustworthy evidence that:

- (a) Mr. T. has been overwhelmed, at times, with the care of his wife alone.
- (b) There have been problems with hygiene and sanitation in the home which appear to be continuing to some extent as recently as 3 June 2000.
- (c) Mr. T. has difficulties managing stress and frustration and tends to react in

anger.

[18] The care of a newborn infant can be extremely stressful and is very labour intensive, requiring 24-hour-per-day vigilance. The parents have no in-home family support and no planned concrete support in the home from friends. They do appear to have numerous friends and supporters from their church but there is no evidence that any of these individuals have directly assisted in the home. Therefore, based on the evidence before me, I find reasonable grounds to believe that there is a risk, that goes beyond speculation, that this newborn infant, if he were returned to his parents' care, would be likely to suffer physical harm.

### **3.2: Could D.T. Be Adequately Protected at this Point in Time by Terms and Conditions of an Interim Supervision Order to his Parents?**

[19] Mr. and Mrs. T. have always been co-operative and motivated to accept any services offered. They are both eager to learn how to be good parents and I have no doubt will co-operate with the children's aid society and other outside service providers. There is evidence that the parents made some efforts on their own to obtain suitable housing but that these efforts were not successful. There is no evidence that they pursued anything further until referrals were made by the children's aid society and the Civic Hospital at the end of April.

[20] At this point in time, as previously indicated, homemaker services are in the home two hours per week and would be available up to 15 hours per week. The homemaker has been and can continue to assist with household chores and laundry and can alleviate some of the hygiene concerns. At this point, the evidence is that Mr. T. would not permit the visiting homemaker to assist with the care of Mrs. T. or in other ways. The public health nurse has been involved since May and can continue to visit with the couple periodically. Once D.T. is returned home, further programming may be available through public health. An occupational therapist has been assigned to the family and just commenced an assessment on 7 June. The therapist will be able to assess Mrs. T.'s abilities and limitations and recommend what might be of assistance to her. This will take some time.

[21] What is absolutely required and is not in place, is attendant or respite care. A referral was made through the Community Care Access Centre for attendant care but this is not available until January 2001. The children's aid society cannot provide such a service. The parents have a great deal of support from friends and church members as evidenced by the exhibits to their affidavits. However, no concrete plan or proposal for alternative, ongoing respite care has been made at this point in time. No order that I can make today will change that situation. Therefore, the services available in the parents'

home at present, court-ordered or not, are inadequate to alleviate the risk of harm to this newborn baby.

#### 4: CONCLUSION

[22] The focus in this case must, as always, be on the needs and interests of the child. The paramount purpose of the *Child and Family Services Act* outlined under subsection 1(1) is to promote the best interests, protection and well being of children.

[23] At this point in time, I find that the children's aid society has met the test under subsection 51(3) and therefore, there will be a temporary order placing D.T. with his maternal grandmother under the supervision of the children's aid society on the following terms and conditions:

1. The parents and the grandmother will co-operate with the society, in its efforts to assess the family's needs and abilities (including a home assessment of the grandmother's home, unrestricted access to the child, scheduled and unscheduled visits at the grandmother's and parents' homes).
2. The parents will demonstrate the ability to maintain a safe and hygienic environment. They will make efforts to obtain wheelchair-accessible and adapted housing with the assistance of the children's aid society.
3. The parents and the grandmother will sign all consents required by the society to liaise with involved and past services.
4. Mrs. T. will never be left alone to care for the baby. The parents will obtain prior children's aid society approval for all caregivers chosen to assist Mrs. T. with the baby should Mr. T. not be available.
5. The couple will continue working with services involved including the public health nurse, homemakers and any other recommended and available services.
6. The children's aid society will provide a family support worker to assist the parents.
7. Mr. T. will participate in stress and anger management counselling.

[24] There will be supervised access to the parents, a minimum of five times per week, four hours for each visit in the parents' home.

[25] This is a temporary order only and both the parents and the children's aid society should focus on obtaining the required assessments, supports and services that would alleviate the risk of harm to D.T. and enable him to return to his parents. To that end, I would make the following recommendations:

- (a) The homemaker should extend her hours to the maximum possible. The parties agree that at this point, 15 hours per week could be provided.
- (b) The occupational therapist should complete the assessment as soon as possible and follow-up should begin on implementing any recommendations.
- (c) The children's aid society should place the family support worker in the home as soon as possible to assist on visits and to continue to assist with parenting skills when the child returns home.
- (d) Most importantly, the parents should provide a plan and a schedule for ongoing respite care using the assistance of friends and church members, if such care is not available through community organizations.

[26] The plan for respite care and the family support worker should be in place within the next three weeks. At that point in time, with those additional supports and any additional information from the other service providers, the matter can be brought back before me on or before 30 June 2000 for a combined case conference and settlement conference as to a possible variation of the temporary order. The conference will be required before any further motion is argued regarding the care and custody of the child.

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[1]. See *Child and Family Services Amendment Act (Child Welfare Reform)*, 1999, S.O. 1999, c. 2 [substantially in force on 31 March 2000].