

2002 CarswellAlta 1517, 2002 ABPC 184

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Alberta (Director of Child Welfare) v. S. (S.)

IN THE MATTER OF THE CHILDREN K.S. (REFERRED TO AS KAT) BORN MAY 15, 1998 AND  
K.S.(REFERRED TO AS KY) BORN MAY 10, 1992 CHILDREN WITHIN THE MEANING OF THE CHILD  
WELFARE ACT; (ALBERTA) THE DIRECTOR OF CHILD WELFARE (Applicant) and S.S. (Respondent)

Alberta Provincial Court

Brownlee Prov. J.

Judgment: November 27, 2002  
Docket: Calgary N17250, N17251

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Counsel: *J. Nicholson*, for Director

*J. Joshi*, for Mother

*W.R. Scott*, acting for the firm of *Castle, Hoffman*, for Father

Subject: Family

Family law --- Children in need of protection — Application for permanent custody — Factors to be considered  
— Particular factors — Parents' drug or alcohol addiction.

Family law --- Children in need of protection — Application for permanent custody — Factors to be considered  
— Best interests of child.

APPLICATION by Director for Order of Permanent Guardianship of children with no access to parents.

***Brownlee Prov. J.:***

## **INTRODUCTION**

1 The Director seeks an Order of Permanent Guardianship with no access to the parents respecting the children KY Born May 10, 1992 and KAT born May 15, 1998. Their mother Ms. S.S. opposes such applications. KAT's biological father Mr. F. H. seeks continued access to KAT and, if possible, to KY as well. KY's biological father P.M. is not a party to these proceedings.

## **ISSUE**

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1. Could or should the care of the two children be returned to their mother within a reasonable period of time?
2. If the Director is successful in his applications, is it in the best interests of either or both children to have some continuing access to their mother and to KAT's biological father F.H.?

### **BRIEF HISTORY**

3 The mother's early life was turbulent. The mother says she was sexually assaulted by her older brother when she was 11. She was a ward of the Province of Alberta from approximately age 10 to her mid teens at which time she returned home. She left home at age 19. By then she had developed abusive relationships and had turned to alcohol and hard drugs. S.S. gave birth in British Columbia to KY, May 10, 1992. The father was P.M. who abused the mother. Between October the 31, 1995 and June 12, 1997 KY was twice removed from her mother in British Columbia as a result of community concerns and each time made the subject of Supervision Orders. While S.S. and F.H. lived together in British Columbia S.S. became pregnant with KAT. The mother reported F.H.'s physical violence towards her. She also admitted they both used hard drugs. By March of 1998 they had all moved to Calgary where KAT was born some two months later. Following a number of community reports the Director was granted a 4-month Supervision Order March 24, 1999 to which the mother reluctantly agreed. A term of that Order was no contact with F.H. Further concerns, including the mother's breach of the no-contact clause lead to the children being apprehended July 18, 1999. On September 3<sup>rd</sup>, 1999 the children were returned on a 6-month Supervision Order. Two of the terms were no alcohol and drugs and neither F.H. nor P.M. were to be near S.S.'s residence. At the end of the Supervision Order the Director's file was closed. Due to the mother's erratic behaviour, on or about July 18, 1999 the children were again apprehended and by arrangement with the Director ,were taken by KY's paternal grandmother, until the children were returned to the mother September 23, 1999 on a further 6-month Supervision Order. On September 1, 2000 the Director once again intervened and the children became subject to a 6-month Supervision Order. On November 22, 2000 the children were apprehended once again. On December 1, 2000 the Director applied for a Permanent Guardianship Order. The mother completed phase one at the Landers' Treatment Centre for substance abuse and on January 15, 2001 the children were again returned to the mother's care. The mother, on March 21,2001 sought and obtained a Restraining Order against F.H. to expire April 11, 2002. On April 23,2001 the Director withdrew his application for Permanent Guardianship and obtained a further Supervision Order for 6 months. In July, 2001 the Director again applied for a Permanent Guardianship Order due to the mother's chronic drug use in spite of her attendances at various treatment centres. The children were apprehended July 9, 2001 and have remained in the care of the Director since then and have both resided with the same foster mother referred to herein as Audrey. The mother has had continuing access to both children since their last apprehension and F.H. has had access to KAT, since on or about the end of the Restraining Order in early March 2002.

### **MATERIAL FACTS**

- 4 The Court having addressed all the evidence and arguments it appears unnecessary to review here all the evidence presented but simply to recite those facts which the Court deems necessary for the purpose of these applications.
- 5 The mother by her own admission, was sexually assaulted by her brother, she lived with parents who abused alcohol, was in and out of her parents home until age 19 by which time she was beginning to use alcohol and

hard drugs. In spite of the mothers completion of the Landers' Treatment Centre Addictions Counselling, the AADAC Awareness and intensive day programs, the Avanta Drug Treatment Program and in spite of counselling by Mr. David Wellings for a considerable period, in-home support and, until recently, supportive parents, the evidence points to the fact that the mother is addicted to cocaine and continues to use it frequently.

6 The children have been apprehended a total of approximately 5 times between October 31, 1995 and July 9, 2001 due to issues of violence between the mother and P.M. and F.H. and the use of hard drugs by the mother. The mother spoke of a further negative association with one Mr. A. and by her own admission, she attracts or is attracted to violent male companions.

7 In spite of a history of violence by F.H. directed at the mother, the mother has continued to communicate with F.H. and this has been so in spite of a Restraining Order and terms of many Supervision Orders. Sargent King reported an admission by S.S. that F.H. had been at her residence on or about January 19, 2002 although it is noted that by that time neither party was then subject to a non-association order.

8 KY, the oldest child and the best one able to voice her thoughts, has said to Child Welfare witnesses that she saw her mother and F.H. consuming "white stuff". She described how they acted strangely at such times and became involved in violent physical altercations. Although the children have not been the subject of such violence, still KY is afraid of F.H. and apparently remains so to this day. F.H. was convicted in Calgary of physically assaulting the mother.

9 The mother, for no explainable reason, missed an important access visit with her children in late 2001. Since March of 2002 the mother has missed 7 scheduled access visits with her children for no apparent reasons. Such conduct by the mother has further traumatized the children who display everything from tears to sad behaviour when visits with the mother do not occur. The foster mother, identified only as Audrey, confirmed that missed access visits by the mother caused KAT to cry and KY to become angry and uncommunicative. On the other hand the foster mother reported that the children appeared to be happy in her residence and, if so permitted, would continue to care for the children in the foreseeable future.

10 Sargent King observed a backpack in the mother's residence on January 19, 2002 containing what Sargent King described as drug paraphernalia and traces of a white powder. This is consistent with the conclusion that S.S. was then consuming hard drugs. The mother has, since the Order of March 2002 been subject to random drug tests. She was to complete 4 tests in each of April to September consisting of some 24 tests. She kept only 8 of those appointments. It is noted however that of all of those appointments save one she tested negative. On that occasion she was unable to void.

11 Dr. Lesley MacDonald, recognized by this Court as an expert in clinical psychology, carried out a Psychological/ Parenting assessment on the mother which she completed on November 29, 2001. Dr. MacDonald concluded that by reason of the mother's continued hard drug use that she was addicted and not likely to reform.

12 Ms. Magdalena DAmestica, recognized by the Court as an expert in clinical psychology, did a Psychological Assessment on KY and has continued fortnight sessions with the child till the present time. Ms DAmestica, concluded that the mother's missed visits with her children have been devastating for the children and that the mother must change her parenting behaviour including no drugs. Furthermore she must understand how her negative behaviour reacts on her children and demonstrate a willingness to change her behaviour to meet the needs of her children. When S.S.'s condition is stable she is a good mother to the children. KY has been traumatized by her mother's use of alcohol and drugs and by domestic violence which she witnessed. Ms. DAmestica said that

any consideration for the return of the children to the mother must be predicated on the mother maintaining a stable condition, including no drugs, for a period of one year.

13 The mother failed to attend Court on September 17<sup>th</sup> and 19<sup>th</sup> and October 25<sup>th</sup>. Her counsel was unable to produce a medical certificate to excuse her failure to attend but he did indicate that on at least 2 if not the 3 occasions S.S. was in such a mental and emotional state that she required medication. On the first of such occasions her own parents with whom she had recently been residing did not know of her whereabouts and were dubious about their further support.

14 On the other side of the coin, when the mother has been drug free she has displayed a good loving relationship with her children and has kept her residence neat and tidy and well stocked with food. The mother obviously, in her own way, loves her daughters.

15 While the children are extremely disappointed with the failure of the mother to attend many access visits, they apparently continue to love their mother. KY has verbalized that she wishes her mother would stop using "the white stuff" and stop her violent quarrels with F.H.

## CONCLUSION

16 The evidence points to the fact that the mother has been a chronic hard drug user for some time and that such condition likely continues. Dr. MacDonald who assessed the mother, concluded that the mother's continued hard drug use was not likely to stop.

17 S.S. by her own admission, is attracted to or is attracted by predatory males. A long history of abuse by certain of her male companions, including F.H., supports this conclusion.

18 There is very strong evidence that the mother has experienced much emotional trauma throughout her life. She has many underlying issues to successfully address for her own sake let alone for the sake of her children. Ms. DAmestica suggested to the Court that if the mother can remain drug free for a year, and demonstrate that she has settled down, that she is doing well, that she is healthy, and that she is still living with her parents or some other stable residence she might well be in a position to seek the return of her children to her care. However, as Ms. DAmestica has said "maybe that even Ms. S. doesn't know why she is really doing this (drug use)." The sad aspects of this matter are that the mother has shown that when she is drug free for a long duration she is capable of expressing love for her children and to adequately provide for them. Furthermore the children still express a love for their mother.

19 However, these positive factors are outweighed by my recital of the negative factors. As has often been said by this Court, the children cannot wait for the parent to clean up her act. The mother has had warnings with respect to her parenting ability since October of 1995 when the equivalent of Child Welfare opened a file on the family in British Columbia. These concerns have continued through a number of apprehensions and a number of Court Orders. The mother has entered treatment programs for drug abuse which have not brought positive long term results. Thus there is little guarantee that the mother will be able to address her drug abuse, her attraction to predatory males and all of the underlying emotional issues with which the mother has been living much of her life. Even if she addresses those issues there is no indication that this will bring positive results.

20 This Court is satisfied firstly that both children are in need of protective services as their mother is incapable of providing care appropriate to meet their needs and further that there is a risk that if the children are re-

turned to the care of their mother they will be subject to emotional abuse. It cannot be anticipated that the children should be returned to the care of their mother at this time. Likewise it cannot be anticipated that the children could or should be returned to the care of their mother within a reasonable period of time. Thus this Court grants to the Director Orders of Permanent Guardianship respecting each of the 2 children.

21 [1]

22 The Court understands that there have been recent access visits between the mother and children and that apparently they have been somewhat successful. This Court is thus reluctant to deny the mother further access to the children. There may or may not be adoption in the future. Thus this Court grants to the mother access to the children at the discretion of the Director.

23 The father of KAT seeks access to his daughter if not to both girls, by telephone and letter while he is in prison and with some ongoing contact after that time. This Court acknowledges that when he was granted access to the children March 27, 2002 but subject to random drug testing, F.H. has attended each drug test as required and tested negative. Furthermore it is acknowledged that on those once per month access visits between F.H. and KAT he has brought gifts to KAT and in every respect has acted appropriately. Furthermore it appears that KAT enjoys her access visits with her father.

24 On the other side of the coin this Court is dealing with a 36 year old male who has accumulated a record of 32 convictions 6 of which were for assault and with S.S. being the victim of 2 of those assaults. His most recent conviction is that of robbery for which he is currently serving a 4 year term. There is evidence that F.H., at least for a period in his adult life, was a consumer of hard drugs. There is also evidence that at least up until January 17, 2002 when F.H. went to S.S.'s residence and damaged her property, he has displayed periodic episodes of extreme anger.

25 While it may be in the interests of F.H. to have regular access in some form to both KAT and KY, this Court disagrees. Therefore the Order will contain a clause that F.H. will have no access to either child save and except a Christmas present and/or a Christmas card during December of this and succeeding years and any present and/or birthday card on the occasion of each child's birthday. Such presents and/or cards will firstly be approved by and then delivered by the Director to each child.

26 The Court will now cause an Order to be prepared and executed in accordance with the terms of this conclusion.

*Application granted in part.*

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