2003 CarswellAlta 1769, 2003 ABCA 348, 26 Alta. L.R. (4th) 19, 346 A.R. 127, 320 W.A.C. 128, 49 R.F.L. (5th) 450

W. (J.) v. C. (J.)

J.W. and E.W. (Appellants / Plaintiffs) and J.C. (Respondent / Defendant)

Alberta Court of Appeal

Fraser C.J.A., McFadyen, Fruman JJ.A.

Heard: September 10, 2003
Judgment: September 10, 2003
Docket: Calgary Appeal 0301-0110-AC

Proceedings: affirming *W. (J.) v. C. (J.)* (2003), 2003 ABQB 211, 2003 CarswellAlta 1767 (Alta. Q.B.)

Counsel: L.M. Sparling for Appellants

D.P. **Castle** for Respondent

Subject: Family; Civil Practice and Procedure

Family law --- Custody and access — Practice and procedure — Standing

Defendant was father and sole guardian of two children — Aunt and uncle alleged sexual abuse by father of one or both children and claimed that father required help in caring for children — Plaintiff aunt and uncle applied for guardianship of children — Father applied to strike application of aunt and uncle for lack of standing — Application by aunt and uncle dismissed — Aunt and uncle appealed — Appeal dismissed — Aunt and uncle did not fall within any of four acceptable categories to establish sufficient nexus to warrant standing for guardianship — Evidence presented by aunt and uncle did not establish sufficient nexus between children and aunt and uncle to justify standing for guardianship — To justify standing in guardianship application under s. 53 of Domestic Relations Act, relationship between applicant and child must be almost akin to parental relationship in terms of care, nurture and support — No strong policy reason existed to relax standing requirements based solely on alleged need to protect children — Legislative regime existed to protect children from unfit parents — Public policy favoured narrow formulation of test for standing in guardianship application to protect societal interest in maintenance of family unit and parent-child bond.

Family law --- Guardianship — Appeals

Defendant was father and sole guardian of two children — Aunt and uncle alleged sexual abuse by father of one or both children and claimed that father required help in caring for children — Plaintiff aunt and uncle applied

for guardianship of children — Father applied to strike application of aunt and uncle for lack of standing — Application by aunt and uncle dismissed — Aunt and uncle appealed — Appeal dismissed — Aunt and uncle did not fall within any of four acceptable categories to establish sufficient nexus to warrant standing for guardianship — Evidence presented by aunt and uncle did not establish sufficient nexus between children and aunt and uncle to justify standing for guardianship — To justify standing in guardianship application under s. 53 of Domestic Relations Act, relationship between applicant and child must be almost akin to parental relationship in terms of care, nurture and support — No strong policy reason existed to relax standing requirements based solely on alleged need to protect children — Legislative regime existed to protect children from unfit parents — Public policy favoured narrow formulation of test for standing in guardianship application to protect societal interest in maintenance of family unit and parent-child bond.

Family law --- Guardianship — Appointment by court — Practice and procedure

Defendant was father and sole guardian of two children — Aunt and uncle alleged sexual abuse by father of one or both children and claimed that father required help in caring for children — Plaintiff aunt and uncle applied for guardianship of children — Father applied to strike application of aunt and uncle for lack of standing — Application by aunt and uncle dismissed — Aunt and uncle appealed — Appeal dismissed — Aunt and uncle did not fall within any of four acceptable categories to establish sufficient nexus to warrant standing for guardianship — Evidence presented by aunt and uncle did not establish sufficient nexus between children and aunt and uncle to justify standing for guardianship — To justify standing in guardianship application under s. 53 of Domestic Relations Act, relationship between applicant and child must be almost akin to parental relationship in terms of care, nurture and support — No strong policy reason existed to relax standing requirements based solely on alleged need to protect children — Legislative regime existed to protect children from unfit parents — Public policy favoured narrow formulation of test for standing in guardianship application to protect societal interest in maintenance of family unit and parent-child bond.

Cases considered by *Fraser C.J.A.*:

B. (B.) v. D. (L.) (2002), 2002 ABQB 429, 2002 CarswellAlta 531, [2002] 8 W.W.R. 178, 3 Alta. L.R. (4th) 317, 313 A.R. 291 (Alta. Q.B.) — followed

D. (G.) v. M. (G.) (1999), 1999 CarswellNWT 40, 47 R.F.L. (4th) 16 (N.W.T. S.C.) — considered

Williams v. Williams (1995), 13 R.F.L. (4th) 152, 172 A.R. 10, 1995 CarswellAlta 44 (Alta. Q.B.) — referred to

Statutes considered:

Child Welfare Act, R.S.A. 2000, c. C-12

Generally — referred to

Domestic Relations Act, R.S.A. 2000, c. D-14

s. 53 — referred to

s. 53(1)(b) — considered

APPEAL by plaintiff aunt and uncle from judgment reported at *W. (J.) v. C. (J.)* (2003), 2003 ABQB 211, 2003 CarswellAlta 1767, 49 R.F.L. (5th) 442 (Alta. Q.B.) dismissing application by aunt and uncle for guardianship of children for lack of standing.

***Fraser C.J.A.*:**

1 This is an appeal from a decision in which the appellants' application for guardianship of the respondent's two children was dismissed due to lack of standing. The appellants are the aunt and uncle of the two children. The respondent is the children's father. His wife, the aunt's sister, died a few years ago.

2 The appellants commenced an action under s. 53 of the *Domestic Relations Act*, R.S.A. 2000, c. D-14, claiming guardianship of the children. That section provides:

> 53(1) If on the application of a minor, or of anyone on behalf of the minor, it appears
>
> . . .
>
> (b) that the parent or lawful guardian is not a fit and proper person to have the guardianship of the minor,
>
> the court may appoint a guardian or guardians of the person and estate, or either, of the minor.

3 The respondent sought an order striking the action on the basis of the appellants' lack of standing. The chambers judge found that, before the appellants had an opportunity to address the fitness test, they first had to establish that they had standing.

4 The chambers judge concluded that the appellants had not established a sufficient nexus which would warrant their receiving standing to apply for guardianship or access. Accordingly, she dismissed their application. The appellants appeal.

5 The chambers judge cited the test set out in *Williams v. Williams* (1995), 172 A.R. 10 (Alta. Q.B.). She concluded that there need not be a legally recognized nexus between the children and the appellants, quoting specifically from *Williams* on this point. In addition, after finding that the appellants did not fall within any of the four categories set out in *Williams*, she went on to determine whether the evidence established that there was a sufficient nexus between the appellants and the children to justify standing to apply for guardianship.

6 There is ample authority to support the approach that the chambers judge took. Moen J. in *B. (B.) v. D. (L.)* (2002), 3 Alta. L.R. (4th) 317 (Alta. Q.B.), expressed the test this way (at para. 24):

> Simply put, to gain standing in a guardianship application, where the person is a legal stranger, the person must show an intimate connection to the child which is almost parental in nature.

7 In *D. (G.) v. M. (G.)* (1999), 47 R.F.L. (4th) 16 (N.W.T. S.C.), Vertes J. noted that standing will not be granted to anyone who simply has an interest in the child. Instead, he held (at para. 41) that there must be a connection to the child "almost equated to a parental one in the sense of care, nurture and support."

8 We would state the test for standing in a guardianship application under s. 53 of the *Domestic Relations Act* this way:

> The applicant must establish a close personal relationship with the child almost akin to a parental relationship with respect to care, nurture and support.

This test invokes a judge's discretion and will obviously be closely linked to the factual matrix of the relationship between the parties and the children.

9 Despite the appellants' arguments, we see no compelling policy reason to relax the requirements for standing based only on a claimed need to protect children. To address this very important social goal, the state has put in place a comprehensive legislative regime, the *Child Welfare Act*, R.S.A. 2000, c. C-12, to protect children from unfit parents. Further, public policy weighs heavily in favour of a narrow formulation of the test for standing in a guardianship application, having regard to the societal interest in protecting the family unit and the parent/child bond.

10 Based on the trial judge's fact findings, we agree with the trial judge that the evidence fell short of establishing the necessary connection in this case. Her findings are supported by the evidence. Consequently, the appeal must be dismissed.

(Discussion as to Costs)

11 We see no reason to interfere with the trial judge's finding on costs. Thus, each party will bear its own costs in the court below. The respondent will have his costs of the appeal.

12 We hereby order that the file in this matter be sealed to prevent the improper disclosure of any identifying information.

Appeal dismissed.

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