CLERK OF THE COURT
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JUL - 3 2014
CALGARY, ALBERTA

Court of Queen's Bench of Alberta

Citation: EG v Alberta (Child and Family Services), 2014 ABQB 406

Date:
Docket: FL01 17502
Registry: Calgary

In the Matter of: *The Child, Youth and Family Enhancement Act,*
R.S.A. (2000) Chap. C-12, and
In the Matter of E.G.G., Born May, 2007 and
C.M.G., Born May 2007

Between:

E.G. and A.G.

Appellants

- and -

The Director of Child and Family Services

Respondent

Restriction on Publication

Identification Ban – See the *Child, Youth and Family Enhancement Act*, section 126.2.
No one may publish the name or photograph of a child, or of the child's parent or guardian, in a manner that reveals that the child is receiving, or has received, intervention services.
NOTE: This judgment is intended to comply with the restriction so that it may be published.

Reasons for Judgment
of the
Honourable Mr. Justice G.C. Hawco

Appeal from the Judgment by
Judge L.T.L. Cook-StanhopeThe Honourable Judge
Filed on the 22nd day of November, 2013 Dated the 22nd day of November, 2013

(2013 ABPC 311, Docket: 111367470W1)

Decision

[1] This is an appeal from the decision of Her Honour Judge Cook-Stanhope wherein she granted a permanent guardianship order ("PGO") with respect to two children of the Appellants, who will be referred to as EG and CM or as "the twins". The trial took place over 16 days through the summer of 2013. The decision was rendered on November 22, 2013.

[2] As stated by the Court of Appeal in ***M.T. v. Alberta (Director of Child Welfare)***, 2005 ABCA 125, at para 24:

> The scope for appellate review of a permanent guardianship order is the same as for an order for custody. Only where the judge has acted on a wrong principle or disregarded material evidence, or where the decision is otherwise clearly wrong, will the appellate court interfere ...

[3] In my respectful view, I have concluded that the trial judge has both acted on a wrong principle and has disregarded material evidence.

[4] I am therefore setting aside the PGO and ordering that the Director return the two children to their parents, on certain conditions.

Reasoning

[5] With the greatest respect to the trial judge, it appears to me that she was unduly influenced by the abuse of the parents to their three adopted children (who were also removed from the parents care by the Director, and properly so) and concluded that because of that abuse, they were "capable of doing the same to" their biological children, who were the object of the PGO with which we are concerned.

[6] As again stated by the Court of Appeal in ***MT***, the onus is on the Director, under s 34(1)(c) to show that the return of the children is not possible within a reasonable time. There is also an onus to show the survival, security or development of these children could not be adequately protected if they were to be returned to their parents.

[7] The trial judge did find that the Director did satisfy her with respect to both conditions, but concluded so, in my respectful view, because she completely disregarded the evidence of Dr. Irene Estay, a psychologist who worked with the parents following the apprehensions of five children and who did give evidence at the trial, Ms. Debra Harland, a social worker who specialized in child and family matters and who prepared a report on behalf of the Calgary and Area Family and Child Services, and a psychology report prepared by Dr. Sonya Vellet. In addition, the trial judge appears to have paid very little attention to the numerous reports by the people who supervised the access visitation with the two children. In her view, these reports were of little if any help because the visits took place in a "Disneyland" atmosphere. Finally, the trial judge appears to have placed very little, if any, reliance upon the part of an in-home support

worker wherein that person, Ms. Saeideh Khajeh stated that she believe the family deserved to have another chance to have the children.

[8] The trial judge was of the view that Dr. Estay was almost "completely misled" by the parents and that therefore little or no weight could be upon her evidence. Ms. Harland was not called by the Appellants, for whatever reason, during the trial. However, her report was entered as an exhibit and Dr. Mendelson, upon whom the trial judge very much relied, did read it and referred to it and disagreed with many of Ms. Harland's conclusions. Ms. Harland's report was, in my view, quite favourable to the parents. Indeed, in response to the question of what the overall risk of the parents maltreating either of their two children, she said this:

> [The parents] have much parental strength. There is a need for continued intervention and the parents motivation for continued change, knowledge, and resolve is very high; therefore the prognosis is very good. With continued intervention, the risk of maltreatment is very low based upon the evidence that this couple has already demonstrated success in their learning and their capacity to change.

This was one of her conclusions with which Dr. Mendelson did not agree.

[9] Ms. Vellet's report was also favourable. She stated:

> In sum, despite acknowledged challenges in the parenting histories of [the parents], it is the opinion of the current author that Mr. __ has and Mrs. __ has emergent skills (that require enhancement through intervention) to be the attachment figures and parents that G and C need and deserve, thus laying the foundation for healthy long-term development in virtually all aspects of their children's lives ...

[10] I appreciate that the then counsel for the parents stated that they did not seek to rely on either of these reports. But they were entered as exhibits and were referred to by Dr. Mendelson and others. It is also clear from my reading of the reports that the trial judge read them, as indicated by the highlighting and written comments. As such, in my view, some comment ought to have been made about them.

[11] As a trial judge myself, I am very aware of the deference which ought to be given to the trial judge in these proceedings. She is very experienced and learned in this particular area of the law. But to remove – and to keep away one's children – is surely the ultimate penalty for a parent. It should only be used in the most serious of cases where there is, to refer to s 34(1)(c) of the *Act*, no reasonable hope of returning a child within a reasonable time. Dr. Estay, Ms. Harland and Ms. Vellet thought there was a reasonable hope of keeping the family unit together, with some help.

[12] Dr. Mendelson thought the children would be subject to too great a risk of abuse because of what occurred with the adopted children and because she saw no empathy and no real remorse by the mother. No one appears to have examined or even considered whether the risk was greater or smaller because of the fact that the twins were their own while the older children were adopted.

[13] Dr. Mendelson was also concerned that the parents were lying because they denied ever having abused the twins. What the children apparently reported was that they had been hit by

their father and that it hurt. The eldest adopted child also said that she had seen her father hit the twins on the bottom with a belt.

[14] Two of the psychologists that had examined each of the twins opined that neither exhibited any trauma symptoms. I am not satisfied that the evidence with respect to "abuse" of the twins would in fact amount to abuse without something more.

[15] All of the supervisors and the in-house support worker had only positive things to say when this family was together. The supervisors and the in-house support worker saw the love between the children and their parents and vice versa. The trial judge appeared to be of the view that this was not of any significance because it was happening in an unreal and somewhat staged situation.

[16] When the Director is deciding to remove a child or children, there should really be, in my respectful view, little room for doubt. Again, as stated by the Court of Appeal in ***MT***, at para 20:

> A court, hearing an application for permanent guardianship under the *Act*, must consider the requirements of both sections 2 and 34(1). Section 2 sets out the guidelines for determining what is in the "best interests of the child." These guidelines indicate, among other things, that a child's best interests are usually served by maintaining the family unit where that is possible.

[17] I do not lightly interfere with the trial judge's decision, especially one so well qualified, but I am troubled by what I consider to be the gaps and I am therefore not prepared to uphold the order.

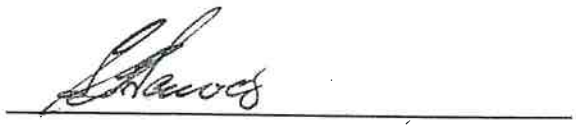
Conditions

[18] I agree with Dr. Mendelson that the reintegration of these children needs to be very carefully monitored and assessed. I leave it to the Director as to how this can best be achieved, however, I do note that in Dr. Vellet's report of December 8, 2012, she recommended that the parents and the children would benefit from receiving specialized intervention to assist in discussing in a sense the range of issues with the children. She also recommended that the parents participate in an intensive attachment-based parent education and psychotherapy intervention (with an in-home component) to assist in building their caregiver-infant attachment relationships. She was of the view that this intervention should be given prior to, during and subsequent to the children's transition home. Again, I leave that issue to the Director.

[19] The parties are free to discuss with me the terms of the order.

[20] The Appellants are entitled to their costs.

Dated at the City of Calgary, Alberta this 3rd day of July, 2014.



G.C. Hawco
J.C.Q.B.A.

Appearances:

Michelle Lee
for the Director

Diann P. Castle
for the Appellants, E.G. and A.G.

Suchetna Channan
for the Children