

Child and Family
Services
Review Board
Custody Review Board

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Commission de révision
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Commission de révision des
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July 16, 2010

Mr. [REDACTED]
[REDACTED] Drive
Peterborough, ON K9J 6X3

RE: CA10-0038

Dear Mr. [REDACTED]:

Enclosed is a copy of the Child and Family Services Review Board's Reasons for Decision in the matter of your application pursuant to Section 68 of the *Child and Family Services Act*.

Sincerely,

A handwritten signature in cursive script, appearing to read "Stephanie Miller".

Stephanie Miller
Case Coordinator

Attachment/:

cc: Family Youth & Child Services of Muskoka

REASONS FOR DECISION

INTRODUCTION

[1] [REDACTED] (the "Applicant") filed an application with the Child and Family Services Review Board (the "Board") dated February 22, 2010 under section 68.1 (4) 4 and 5 of the *Child and Family Services Act* (the "Act"). The Applicant is complaining about the Family Youth & Child Services of Muskoka (the "Society").

[2] The Society challenged the Board's jurisdiction to hear this application. The hearing on jurisdiction was held on May 14, 2010. The Board found that it had jurisdiction to proceed with the issues numbered: 2, 3 and 4. The issues, as framed in the Pre-Hearing Report dated April 1, 2010 are:

2. That the concern of the Applicant with respect to abuse of the children by their mother, and the impact of this on the children, has not been heard by the Society.
3. That the concern of the Applicant about the impact of the mother's mental health issues on the children has not been heard by the Society.
4. That the Applicant has not been given reasons by the Society for the decision not to remove the children from the care of the mother having regard to the Applicant's abuse concerns, the Applicant's concerns for the impact of the mother's mental health issues on the children, and the seriousness of the information obtained and forwarded to the Society by Peterborough CAS.

[3] The Board determined that the relevant time frame was prior to and up to the date of the Applicant's Application: February 22, 2010.

[4] When inquiring into the merits, the Board held that it would address the following questions:

- What concerns were raised about the care of the children by the mother (by the Applicant and others)?

- What decisions were taken in response to the concerns?
- Was the Applicant given the opportunity to be heard regarding what steps the Society did or did not take in response to the concerns?
- Was the Applicant given reasons for the decisions taken by the Society in response to the concerns (for example, was the Applicant informed of the steps being taken, the outcome of investigations and the reasons for conclusions reached about allegations and next steps with reference to legislative and Ministry standards)?

[5] The issue for the Board, within this framework is whether the Applicant was heard and provided with reasons for decisions, as required by the *Act*. The *Act* provides as follows:

s. 68.1 (4) The following matters may be reviewed by the Board under this section:

s.68.1(4)4 Allegations that the society has failed to comply with clause 2(2)(a).

s.68.1(4)5 Allegations that the society has failed to provide the complainant with reasons for a decision that affects the complainants interests.

s.2(2) (a)

Service providers shall ensure,

- (a) that children and their parents have an opportunity where appropriate to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving.

[6] The Society's position is that it heard the Applicant, involved him in decision making and provided reasons for decisions. The Society did not call any witnesses at the hearing. The Society sought to file an affidavit on the day of the hearing without prior disclosure, notice, request or explanation. The Applicant objected. The Board did not admit the Affidavit but gave the Society the option of calling their witness to give evidence over the telephone. The Society declined. The parties agreed to the admission of other affidavits, namely; those admitted on the jurisdiction motion, for the purposes of chronological information. The parties also agreed to the

admission of two court affidavits which were disclosed prior to the hearing relating to concerns apparently raised with the Society by two women. The Society conceded that it did not interview the two women. These concerns appear to have been raised outside of the relevant time frame for the Board and are now a matter for the Court. The Board did not admit documents that the Applicant sought to tender which had not been disclosed.

[7] The Board relied on the direct evidence of the Applicant and his witness, his mother (“the grandmother”) since there was no evidence tendered to the contrary. The grandmother and the Applicant gave credible testimony.

[8] For the reasons that follow, the Board finds in favour of the Applicant on the issues before it.

BACKGROUND

[9] The Applicant is the father of three children: twins [REDACTED] and [REDACTED], aged 9 and [REDACTED], aged 7. The Society became re-involved with the family in October, 2009 when the Applicant was still living with the mother and the children. The Applicant is concerned that his children have been physically assaulted by the mother and that she has mental health issues. He has reported his concerns to the Society. There are outstanding custody and access proceedings.

[10] In October, 2009 the Applicant and the mother charged and counter charged each other relating to domestic violence. The charges against the Applicant are outstanding. Some time in or around November, 2009, the mother took the children to live in a shelter and they then moved to an apartment. The Applicant had frequent weekend access.

[11] The Applicant commenced his application with the Board on February 22, 2010. The Society filed its summary reply on March 2, 2010. The Society’s protection application was dated March 9, 2010 and was returnable on March 11, 2010. In its protection application, the Society seeks a finding that the children are in need of protection because they have been harmed and are at risk of harm because of a pattern of neglect, including lack of supervision, and that they are likely to suffer emotional harm. In addition to concerns about the safety of the children

in the mother's care, the Society cites concerns in the child protection application about the parents involving the children in the parental conflict. The child protection application seeks a supervision order, terms for the children to reside with the mother and a term of supervised access for the Applicant.

[12] On March 11, 2010, the parties agreed to a consent order placing the children in the temporary care of the mother with access to the Applicant, supervised by the Society at its discretion. The order also directed the Applicant to report any suspected child protection concerns to the Society (and not the Kawartha Society) because that is where the children live.

[13] On June 17, 2010 the court hearing the protection application denied the Applicant and his mother access to the children on an interim basis because the court found that they had involved the children in parental conflict. The court also referenced the recent opening of the file on November 26, 2009 because of a report by the school teacher. According to the findings of Justice Wood: "The nature of the disclosure and material revealed by the children caused society workers concern that although there was cause for concern about the mother's care of the children the father was clearly involving the children in his conflict with the mother. Nonetheless, the society investigated and confirmed to its satisfaction that the respondent mother was using excessive physical discipline and inappropriate language with the children. As a result, the file was passed on to ongoing services and supervision was put in place".

[14] Between October, 2009 and February 22, 2010, the Applicant approached the Society with concerns about the care and safety of his children on several occasions. In addition, multiple third parties approached the Society with concerns about the mother's care of the children. The Applicant and his mother met with the Society on 3 occasions but the Applicant felt that his concerns were dismissed and that he was not informed of what steps were being taken. The Applicant had no knowledge of the third party concerns and the Society's ensuing investigations into those concerns until he obtained disclosure of his file, sometime after February 22, 2010.

ANALYSIS

[15] The Applicant raised serious concerns with the Society about physical discipline of the children by their mother and concerns about their care related to what he felt was the mother's mental health issues in early October, 2009. He was living with the children and their mother at the time. An intake worker, Ms. Gould attended at the home and interviewed the children. The Applicant's mother ("the grandmother") approached the worker as she was leaving asking to provide information because she played a big role in caring for the children on a regular basis. The Society was advised of concerns about their mother hitting the children, leaving marks, slapping one child for not having her clothes at the door, twisting the children's arms and throwing them against the wall. The Society was advised of what the grandmother characterized as the children's increasing fear of and withdrawal from their mother. Further, the Society was advised that the mother would exclude her family from her life, and go out often, late into the night.

[16] The Applicant estimated that total time of the visit with him and his children was half an hour. The grandmother noticed that the intake worker took very few notes. After the meeting, the Applicant asked what could be done and "never got a straight answer". He testified that he followed up but that he was told only that "we're looking into it". He never received a letter setting out the process for or outcome of any investigation.

[17] The grandmother called the Society in early November and asked for a meeting with the Society and the Applicant. The Applicant met with the Society the first week in November, 2009, again with the grandmother present. This was following the alleged incident of domestic violence. The mother was living with the children in a shelter. The Applicant advised the Society that the children's mother was involved in strange internet chat rooms and that they had concerns about exposing the children to this lifestyle and her ignoring the children. Again the intake worker took very few notes. The Applicant had detailed information from the mother's internet activities which he gave to the worker. The worker pushed the information back at him and refused to take it. Subsequently, the Applicant learned that the mother was taking the children on her "first dates" with men from the internet. This is an example of the type of concern he tried to

alert the Society to. The Applicant wanted to know what plan was in place for the children's safety in the new setting, given the concerns about the mother's mental health and behaviours. The intake worker did not provide an answer or information. Again, the Applicant received no follow up and no letter explaining the steps taken, if any or the outcome.

[18] At one of the meetings, the Applicant told the Society about the mother's rules: the children weren't allowed to cough, sneeze, hum or whistle. If they did, they were disciplined and constantly sent to their rooms. They also told the Society about the mother not feeding the children.

[19] The Applicant and the grandmother also told the Society about concerns regarding extreme mould in the shelter. The Applicant learned from the grandmother and not the Society that the children had been given new mattresses because of the mould.

[20] In early January, 2010, the Kawartha CAS worker, Krista Knerr came to the Applicant and his parent's home and did an intensive interview with the children. According to the grandmother, the children revealed a lot of information about constant slapping, name calling, neglect, the mother spending all of her time on the computer and the children's fear of the mother. All of the information was given by Ms. Knerr to the Society.

[21] The Applicant met with Ms. Finlay, the new Society worker on one occasion in January, 2010.

[22] On January 15, 2010 the mother entered into a Voluntary Service Agreement. The Applicant was advised by the Society over the phone of the agreement which referred to "possible" use of discipline and which required the mother to stop using physical discipline. The Applicant did not understand this to be a "verification" of abuse because the word "possible" was used. While the Society viewed this as a "verification" there is no evidence that they explained this to the Applicant. Nor did they send him a letter explaining what had been done, what was to be done and why.

[23] On January 22, 2010, the Applicant and the grandmother met with the Society's workers, Ms. Finlay and Ms. Pelletier who was now taking carriage of the file. The Applicant and the grandmother again asked for the meeting because the children's mother was asking them to take the children beyond the access arranged with the Society. While they wanted this to continue, they wanted to discuss this and their concerns. The Applicant provided the Society with the information about the mother's lifestyle and its impact on the children. They told the Society that the mother was constantly on the computer on potentially dangerous dating sites, screamed at the children if they interrupted her and the children were put to bed at 6 p.m. They also advised the Society that the mother had exposed herself to Sexually Transmitted Diseases and was exposing her children through shared makeup, lipstick and facial creams. They also provided information about the children's ongoing fears and abuse. The grandmother showed the workers how the child [REDACTED] had been grabbed by the upper arm, how the mother grabbed the children under the hair line and squeezed, forcing their heads down, throwing them into a room. They advised the Society that the children were still being thrown against the wall.

[24] The grandmother told the workers that she had written down what the children had told her about the situation at home. She had it with her at the meeting but the Society did not make a copy. Instead, they asked her to send it to them, which she did the following week. The Applicant never heard back from the Society about any of this information including the notes sent by the grandmother. The grandmother explained that she wrote the notes from memory based on what the children disclosed, usually at bed time, after she put the children to bed. The Board reviewed the notes. The notes contain information from October, 2009 to January 25, 2010. The notes refer to the children discussing hitting, slapping across the face, name-calling, not feeding the children at times and the mother constantly being on the computer. The Applicant was never contacted by Ms. Pelletier with any information about how the Society would deal with the situation. The Applicant and the grandmother told the Society about the ongoing slapping of [REDACTED]. The Board found that the information shared was particularly concerning because some of the information involved physical discipline such as the mother grabbing the girls and squeezing their arms and digging her nails in, which is said to have occurred after the Voluntary Service Agreement.

[25] In February, 2010 the child ██████ arrived for a visit with a scab mark on her upper arm which she told the Applicant was where her mother had grabbed her two weeks previously. The Applicant called Kawartha CAS and took the children to meet with the worker, Krista Knerr. After the interview, Ms. Knerr sat down with the Applicant and the grandmother and told them what the children had divulged and that she had serious concerns. She told them she would forward the information to the Society but that it was out of her hands because of where the children lived. The Applicant and the grandmother queried if this type of debriefing was usual because the Society had never sat down with them like this.

[26] The interviews with the children were videotaped and transcribed and sent to the Society. Between them, the children alleged that the mother hit them, slapped them, sent them to bed without food, dug her nails in, "grabs hard", calls them names and swears and doesn't send lunch to school.

[27] In terms of third party reports of concerns about the mother's care of the children, the Society received a report from the teacher on November 26, 2009 that ██████ had reported hitting, slapping and name calling (e.g. "shit head") and yelling at her for coughing. The Society also became aware that the children were aware of the parental conflict. This is the teacher's report referenced in the June 17, 2010 endorsement of Justice Wood.

[28] The Society investigated but did not interview the Applicant or let him know that a referral had been made. They verified the use of physical discipline and decided to transfer the file to ongoing services but did not notify the Applicant.

[29] According to the Applicant, once he read the Society's file sometime after February 22, 2010, he learned that there were at least twelve investigations and multiple reports from the community about concerns with the mother's parenting. The Society led no direct evidence to contradict the Applicant's evidence that he was not informed of third party concerns and that he was not interviewed or advised of outcomes.

[30] After the report from the teacher in November, 2009, the Society did conduct investigations and has made decisions. This is evident from the order of Justice Wood. However, there is no direct evidence to suggest that the Society involved the Applicant in the process and the decision-making. Nor is there any evidence that the Society took any steps or even opened its file after the allegations from the Applicant himself in October and November of 2009.

[31] The Applicant's testimony was that he was "kept in the dark" about what was going on until he read the case notes. He was told about the Voluntary service agreement but clearly did not understand that inappropriate use of discipline had been "verified" or why. He was told in approximately January of 2010 that the Society felt he was coaching the children because they gave repetitive answers. There is no direct evidence from the Society to detail what was explained to Mr. [REDACTED] in this regard, what decisions if any turned on this and how this related to the concerns about the children's safety with the mother.

[32] Pursuant to the mandatory Ministry, Child Protection Standards in Ontario, and regulation 206/00 under the *Act*, when a report comes into a Society it must code the type of concern and level of response using the Eligibility Spectrum. Concerns relating to physical discipline by the primary caregiver usually require an investigation. Where it investigates, the Society must create an investigation plan. In conducting its investigation, it must speak with the non-offending care-giver (in this case, the Applicant who was a parent living in the home or the access parent at the material times). The Society is obliged to create a safety assessment and depending on the circumstances, a safety plan and to conduct a risk assessment with the family. The risk assessment is meant to engage the family in purposeful conversation about their unique circumstances. Under Standard 7, a child protection investigation is generally to be completed within one month of the referral. The Society can make a decision to extend the time frame. The Standard sets out the basis for assessing whether the allegation is more probable than not.

[33] The Standard aims at concluding investigations and notifying families of outcomes in a timely manner. While notification to the person making the allegation is not specifically mandated under the Standard, where that person is a parent, the Society's obligations under s.

2(2) (a) and its obligation to provide reasons for decisions, require communication of outcomes and explanations of outcomes to the alleging parent.

[34] There are specific Standards for opening a file on an ongoing basis. This involves developing a service plan, and an assessment. The Standard speaks to a collaborative process involving participation of the family. A parent is defined under Standard 9 as including the biological parent. Nowhere does the Standard indicate that only the parent with custody is to be involved.

[35] The Society did not interview the Applicant other than on the first occasion in October, 2009. They met with him on a few occasions and called him in response to his calls. However, sometimes they did not return his calls for days. The Society did not explain its process, including with reference to the Standards and the various steps that it had to undertake. It is not clear if the Society even re-opened its file at the time. The Society did not take information proffered to it by the Applicant and did not take copies of other information in a timely fashion. There is no evidence that the Society consulted with the Applicant about what the options were in terms of responses. There is no evidence of safety planning or risk assessments involving dialogue with the Applicant. There is no evidence that the Applicant was notified of the decision to offer ongoing services and the reasons. The Applicant was not told when the various investigations started and ended, if extensions were given and what the outcomes were. It is unclear which allegations the Voluntary Service Agreement was responsive to. For the most part, the Applicant was left confused, uncertain and “in the dark”.

[36] In all of the circumstances, the Board is satisfied that the Society did not give the Applicant the opportunity to be heard about his concerns relating to the safety of the children and the mother’s mental health or about the decisions taken by the Society in that regard. Nor was he heard when decisions were made about how the Society would respond to third party allegations of which he simply had no knowledge. Nor was the Applicant given reasons for decisions taken by the Society in response to third party allegations relating to the mother’s care of the Applicant’s children.

[37] The Board finds that the Society failed to meet its obligations to the Applicant pursuant to s. 68.1 (4) 4 and 5 of the *Act* relating to allegations of abuse of his children by the mother and the mental health of the mother and the impact on the children during the time frame from October, 2009 to February 22, 2010.

[38] The Board found the Society's response to the allegations about the mother concerning. In not listening to the Applicant, not taking what he had to say seriously and in excluding him from the process, the Society seems to have minimized what appear to be serious protection concerns. The right to be heard and the right to reasons exist for parents, in part, to permit them meaningful participation in the process, including the chance to question whether a more aggressive response needs to be taken by a society in the interests of their children. While the Society has concerns that the Applicant has manipulated the children, it offered no evidence or explanations relating to the time frame in question as to why it did not engage him more fully and receive information from him more openly and why it kept him "out of the loop" pertaining to third party concerns which appear to have corroborated his. Had the child protection issues relating to this matter not been put before the Court, the Board in this instance may have ordered a re-investigation to ensure that the Applicant's concerns about the safety and care of his children were fully heard. This entails that the concerns be seriously explored and considered.

[39] At the hearing, the Society offered to write a letter of explanation for the Applicant. The Society advised that if ordered to do so by the Board, it would comply.

[40] The Board orders the Society to provide a detailed written explanation to the Applicant of the following, for the relevant time frame: October 2009 to February 22, 2010:

1. The Society's response to the allegations raised by the Applicant based on the description of the allegations in these reasons. This will include how each set of allegations was coded and what other decisions were taken in terms of the process and the outcome. The explanation will detail dates, timing, steps taken or not taken and why, with reference to the Child Protection Standards in Ontario and the Eligibility Spectrum. This will include an explanation about the decision to offer

ongoing services and an explanation as to whether the Applicant was consulted when ongoing services commenced, in accordance with the Standards or if not, why not.

2. A description of the third party allegations about the mother's care of the children; an explanation as to why the Applicant was not informed about or interviewed regarding the allegations and an explanation of the outcome of the third party allegations, all with reference to the Child Protection Standards in Ontario and the Eligibility Spectrum.

[41] The Board orders the Society to comply within 30 days of the date of this order and trust that it will do so in light of its undertaking to the Board at the hearing.

Sheena Scott

Sheena Scott
Presiding Member

Mary Wong

Mary Wong
Board Member

Wendell White

Wendell White
Board Member

Dated at Toronto on this 16th day of July, 2010.