

## WARNING

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

This is a case under Part V of the *Child, Youth and Family Services Act, 2017*, (being Schedule 1 to the *Supporting Children, Youth and Families Act, 2017*, S.O. 2017, c. 14), and is subject to subsections 87(7), 87(8) and 87(9) of the Act. These subsections and subsection 142(3) of the Act, which deals with the consequences of failure to comply, read as follows:

**87.—(7) Order excluding media representatives or prohibiting publication.**— Where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding, the court may make an order,

. . .

(c) prohibiting the publication of a report of the hearing or a specified part of the hearing.

(8) *Prohibition re identifying child.*— 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.

(9) *Prohibition re identifying person charged.*— The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

. . .

**142.—(3) Offences re publication.**— A person who contravenes subsection 87(8) or 134(11) (publication of identifying information) or an order prohibiting publication made under clause 87(7)(c) or subsection 87(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.

# ONTARIO COURT OF JUSTICE

CITATION: *Children's Aid Society of Algoma v. C.D.*, 2024 ONCJ 167

DATE: 2024 02 21

COURT FILE No.: Sault Ste. Marie 4/23

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

## **CHILDREN'S AID SOCIETY OF ALGOMA**

*Applicant*

— AND —

**C.D.**

**J.C.**

**Michipicoten First Nation**

*Respondents*

---

Before Justice Heather Mendes

Heard on December 12, 2023

Reasons on Motion released on February 21, 2024

---

**D. Dubois..... counsel for the applicant society**

**K. Whitfield.....counsel for the respondent mother C.D.**

**E. McCooeye ..... counsel for the respondent father J.C**

**S. Fisch.....counsel for Michipicoten First Nation**

---

NOTE: This judgment is under a publication ban described in the WARNING page(s) at the start of this document. If the WARNING page(s) is (are) missing, please contact the court office.

## **MENDES J.:**

### Overview

**[1]** The amended application regarding the child F.R.D. born January XX, 20XX filed at Tab 6 of the continuing record and the respondent father's motion for access to the subject child pursuant to s. 104 of the *Child Youth and Family Services Act (CYFSA)* filed at Tab 13 of the continuing record was heard pursuant to *Rule 1* of the *Family Law Rules* as a directed trial on December 12, 2023.

**[2]** The parties filed a Statement of Agreed Fact and consented to a final order regarding the issue of a finding pursuant to s. 74(2)(b)(i) and s. 74(2)(b)(ii) of the *CYFSA*, that the child was in need of protection, a six-month order placing the child in the interim care of the Society and an extension of the statutory time frames pursuant s. 122(5) of the *CYFSA*.

**[3]** The father's motion for access seeks information regarding the child's birth weight and height; yearly photographs; the child's report cards; reasonable electronic/virtual/telephone access on reasonable notice, specified as to frequency, duration, location and level of supervision; correspondence to be provided to the child from the father; and updated biographical data and updated medical information for the father.

**[4]** Save and except for the father receiving information about the child's birth weight and height, the Children's Aid Society of Algoma opposes the motion for access, as does the respondent mother, C.D. and Michipicoten First Nation with whom the child is affiliated through the mother and the maternal grandmother.

### History

**[5]** The child was removed from the care of the mother at birth, with a warrant at the hospital due to the mother's substance misuse and the child being born experiencing symptoms of withdrawal. The protection concerns regarding the mother date back to 2009 and 2013 when the Society became involved with the mother's two older children. The protection concerns involve the mother's struggles with substance misuse and her relationships with individuals who pose a risk to children.

**[6]** In addition to the subject child of this application, the father has twelve children and three stepchildren, none of whom are in his care. The Society was

involved with the father since the birth of his first child in 1995 and on an ongoing basis regarding neglect of the children and lack of supervision.

[7] In addition, and more significantly, the protection concerns involving the father include his history of sexual offences and convictions involving his stepdaughter in 1995 for which he was incarcerated for five months.

[8] Thereafter in 2004 he was found guilty of sexual offences against two of his biological children as well as being found guilty of being a party to the sexual assault of his niece, for which the father was sentenced to a term of custodial penitentiary time for five years. In 2006, the father's oldest six children were made Crown Wards, now known as being placed in extended Society care, with no access to the father.

[9] The father also has a further conviction for sexual assault against an individual whom he assaulted during the course of his employment as a taxi driver.

[10] In December 2022 the father was charged with assault; sexual assault; assault cause bodily harm; utter threats; compelling the commission of bestiality and forcible confinement in relation to the mother, as well as flight from a peace officer. The father has been in custody since December 2022.

[11] In June 2023 the father pled guilty to sexual assault; assault intentional use of force; forcible confinement and assault with a weapon in relation to the mother as well as flight from a peace officer. The father was sentenced to a term of incarceration for just over seven years. The terms of the father's sentence provide that he have no contact with the mother as well as the child.

### Position of the Parties

[12] The father seeks access to the child as he and the child have a biological connection that should not be minimized. It is the father's position that human experience supports the proposition that children seek out their genetic connections.

[13] Further, he suggests that the court should support the maximum contact principle for parents and children. Based on these two principles, it is the father's position that the court should order access for him to the child in the form requested. The father acknowledges his history and so he is not seeking physical contact with the child and as such suggests that there is no risk or protection issue.

[14] The Society, the mother and the First Nation all oppose the father's request for access and specified information regarding the child including pictures as it is their position that the father's request is focused on his desire and his own purpose to connect with the child. The father's request is not child centered nor in the child's best interests and is only being requested for the benefit of the father.

## Legislation

**[15]** Section 1 and Section 2 of the *CYSA* set out the paramount purpose and other purposes of the Act as follows:

### Paramount purpose

1 (1) The paramount purpose of this Act is to promote the best interests, protection and well-being of children.

### Other purposes

(2) The additional purposes of this Act, so long as they are consistent with the best interests, protection and well-being of children, are to recognize the following:

1. While parents may need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent.
2. The least disruptive course of action that is available and is appropriate in a particular case to help a child, including the provision of prevention services, early intervention services and community support services, should be considered.
3. Services to children and young persons should be provided in a manner that,
  - i. respects a child's or young person's need for continuity of care and for stable relationships within a family and cultural environment,
  - ii. takes into account physical, emotional, spiritual, mental and developmental needs and differences among children and young persons,
  - iii. takes into account a child's or young person's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,
  - iv. takes into account a child's or young person's cultural and linguistic needs,
  - v. provides early assessment, planning and decision-making to achieve permanent plans for children and young persons in accordance with their best interests, and
  - vi. includes the participation of a child or young person, the child's or young person's parents and relatives and the members of the child's or young person's extended family and community, where appropriate.

4. Services to children and young persons and their families should be provided in a manner that respects regional differences, wherever possible.
5. Services to children and young persons and their families should be provided in a manner that builds on the strengths of the families, wherever possible.
6. First Nations, Inuit and Métis peoples should be entitled to provide, wherever possible, their own child and family services, and all services to First Nations, Inuit and Métis children and young persons and their families should be provided in a manner that recognizes their cultures, heritages, traditions, connection to their communities, and the concept of the extended family.
7. Appropriate sharing of information, including personal information, in order to plan for and provide services is essential for creating successful outcomes for children and families.

**[16]** Section 74(3) of the *CYFSA* sets out the best interests of a child as follows:

Best interests of child

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall,

(a) consider the child's views and wishes, given due weight in accordance with the child's age and maturity, unless they cannot be ascertained;

(b) in the case of a First Nations, Inuk or Métis child, consider the importance, in recognition of the uniqueness of First Nations, Inuit and Métis cultures, heritages and traditions, of preserving the child's cultural identity and connection to community, in addition to the considerations under clauses (a) and (c); and

(c) consider any other circumstance of the case that the person considers relevant, including,

(i) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs,

(ii) the child's physical, mental and emotional level of development,

(iii) the child's race, ancestry, place of origin, colour, ethnic origin, citizenship, family diversity, disability, creed, sex, sexual orientation, gender identity and gender expression,

(iv) the child's cultural and linguistic heritage,

(v) the importance for the child's development of a positive relationship with a parent and a secure place as a member of a family,

(vi) the child's relationships and emotional ties to a parent, sibling, relative, other member of the child's extended family or member of the child's community,

(vii) the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity,

(viii) the merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent,

(ix) the effects on the child of delay in the disposition of the case,

(x) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent, and

(xi) the degree of risk, if any, that justified the finding that the child is in need of protection.

**[17]** Section 104 of the *CYFSA* in relation to access orders states:

Access order

**104** (1) The court may, in the child's best interests,

- (a) when making an order under this Part; or
- (b) upon an application under subsection (2),

make, vary or terminate an order respecting a person's access to the child or the child's access to a person, and may impose such terms and conditions on the order as the court considers appropriate.

Who may apply

(2) Where a child is in a society's care and custody or supervision, the following may apply to the court at any time for an order under subsection (1):

1. The child.
2. Any other person, including a sibling of the child and, in the case of a First Nations, Inuk or Métis child, a representative chosen by each of the child's bands and First Nations, Inuit or Métis communities.
3. The society.

Notice

(3) An applicant referred to in paragraph 2 of subsection (2) shall give notice of the application to the society.

Analysis

**[18]** The *CYFSA* is clear that the paramount purpose of the *Act* is to promote the best interests, protection and well-being of children. Further, so long as it is consistent with the best interests, protection and well-being of children, the additional purposes of the *Act* recognize that services to children should be provided in a manner that respects a child's need for stable relationships within a family; takes into account physical, emotional, spiritual, mental and developmental needs and provides appropriate sharing of information, including personal

---

information, in order to plan and create successful outcomes for children and families.

**[19]** While the goal of the *CYFSA* is to reunite families, again the paramount purpose is to promote the best interests of the child and protect the child. As such, it is clear that the best interests of the child are at the forefront of the court's consideration in determining the issue of the father's access to the child, not the wants, wishes or desires of the parent.

**[20]** Severing a child's relationship with a parent by denying any and all contact with that parent is an extreme measure and should only be done in the most exceptional circumstances and is an order of last resort.

**[21]** The case at hand is in fact one of the most remarkable cases. In this case, we have a significant history of continued criminality of the father spanning over two decades with numerous convictions for assault and sexual assault against multiple minors, including his own children and stepchildren, as well as adults including a stranger during the course of his employment and the mother of the child in this very case, for which the father is serving a lengthy penitentiary sentence.

**[22]** There are a multitude of factors in this case which when considered as a whole support the position that there should be no access to the father. These factors include his significant criminal history, the facts of the horrific and horrendous assault of the mother by the father over a prolonged period of time and while she was pregnant with the child; the lack of insight of the father regarding his request for access to the child and for essentially ongoing contact with the mother by having her continue to be subjected to contact with him through a family law order when there is a clear and specific criminal order in place which prevents this contact.

**[23]** While the order sought by the father appears to be innocuous and non-intrusive, as it merely requests information about the child and pictures a few times a year as well as virtual visits on reasonable notice, I find this request by the father to be sought to simply advance his own interests and not that of the child or with any consideration for the best interests of the child. The father presented no evidence of what purpose or benefit this sort of access order would serve in the child's best interests.

**[24]** The request by the father demonstrates a complete lack of insight on his part as to how this request for access impacts the mother, given the work the Society is doing with her to reunify the family, as well as the child. I find that the father's request for access is inappropriate and not child focused.



[25] Further, I am concerned that the father's request may allow him to intimidate and continue to exert control and power over the mother. Again, this is simply not something that would be in child's best interests.

[26] In addition, the father failed to present any evidence that he has ongoing, meaningful, or positive contact with his other children, let alone a beneficial relationship with these children, such that the court should factor and consider when determining his request for access with the subject child.

[27] That being said, the refusal of the court to make an access order in favour of the father to the child does not prohibit the child from contacting the father later in life if she so wishes to have a relationship with him.

[28] As such, I am not satisfied that the father receiving information about the child, receiving pictures of the child or the potential of having virtual access visits with the child is in the child's best interests.

#### Conclusion

[29] Therefore, the motion brought by the father for access is dismissed and there shall be a specific order that the father, J.C. shall not have access to the child F.R.D. born January XX, 20XX, nor shall he be entitled to obtain or receive information about the child.

**Released: February 21, 2024**

---

Signed: Justice Heather Mendes  
Ontario Court of Justice