IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *B.A.T.* v. C.L.T., 2004 YKSC 72

Date: 20041115
Docket No.: S.C. No. 02-B0071
Registry: Whitehorse

Between:

B.A.T.

Appellant

And

C.L.T.

Respondent

And

DIRECTOR OF FAMILY & CHILDREN'S SERVICES

Respondent

Publication of the name of a child, the child's parent or identifying information about the child is prohibited by section 173(2) of the *Children's Act.*

Before: Mr. Justice R.S. Veale

Appearances:

Malcolm E.J. Campbell	For the Appellant
Emily R. Hill	For the Respondent C.L.T.
Zeb D. Brown	For the Respondent Director of Family & Children's Services

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is an appeal under the *Children's Act*, R.S.Y. 2002, c. 31, by the father from a three-month supervision order granted in the Territorial Court regarding his two children. The father and mother were separated. The mother had custody of the children and the father was the access parent. The children were apprehended while in the

custody of the mother. The Director of Family and Children's Services (the director) immediately placed the children with the father pending a hearing. The mother consented to the three-month supervision order. This case deals with the issue of whether the children were in need of protection when the director placed them with the father.

THE FACTS

[2] The record in this case provided little information about the parents and the children beyond the specific child protection concerns. The father was 26 years old at the date of the supervision order.

[3] The mother and father separated in June 2001. Initially, the father had custody of the eldest child (now 7 years old) and the mother had custody of the youngest child (now almost 4 years old). The father moved out of the Yukon upon separation. There is no evidence of any protection concerns relating to the father's custody of the eldest child. He returned to Whitehorse in January 2002 and both parents agreed that the children should live together with the mother.

[4] The father was working in a bar at a hotel between 2 p.m. and midnight every day. He was sharing an apartment with a known drug dealer. He acknowledged that his situation was not appropriate for the children. He exercised access at the mother's home on Wednesday and Thursday each week. He stated that he rarely drinks and does not use drugs. The mother, in the mean time, was experiencing difficulties caring for the children. Concerns about her drinking, lack of supervision and neglect were documented by the social worker on behalf of the director in January, February and March 2002. The concerns were raised with both parents and the file was closed.

[5] On August 24, 2002, the RCMP reported a domestic violence situation at the home of the mother. The on-call intake child protection worker attended at the mother's residence. The mother was not present and the babysitter had been taken to the hospital with injuries from a fight. There were non-family persons present. The house was in complete disarray with broken glass, blood on the walls and carpets. There was damage to the bathroom, living room and bedroom. When the babysitter was located, she was intoxicated and taken into custody by the police.

[6] The children were temporarily removed to a foster home. When the mother was located, she was also intoxicated. The director was not prepared to return the children to the mother.

[7] The social worker met with the father in the morning of August 26, 2002. He presented a plan to have the children placed in his custody, rather than in a foster home.

[8] The social worker moved quickly and made the appropriate background checks. She confirmed that the father had moved out of the apartment with the undesirable roommate. He had temporarily moved in with his mother who would assist in caring for the children. He had changed his shifts at work so that he could care for the children in the evening. His mother could care for the children during the day while he arranged to get them into daycare.

[9] The social worker placed the children with the father at his mother's residence in the afternoon of August 26, 2002. The social worker assisted the father in his application for a childcare subsidy for daycare.

[10] The director applied to the Territorial Court on August 27, 2002, for a six-month supervision order for the two children. This was reduced to three months at the hearing on December 20, 2002. The grounds claimed for a finding that the children were in need of protection were that "[the mother] is unable to provide proper or competent care, supervision or control over them". This ground corresponds with section 118(1)(c) of the *Children's Act.*

[11] On October 10, 2002, the Territorial Court granted "interim supervision" of the children to the director until December 20, 2002, when the application of the director would be heard to establish reasonable and probable grounds for the apprehension of the children and the determination of whether they were in need of protection.

[12] The children remained with the father before and after the December 20, 2002 hearing. The father opposed the director's application. The mother, who was pregnant with another child, consented to the director's application. The social worker testified that it would be appropriate "to monitor and help mediate for a few more months to ensure that the children are safe and to ensure that the changes that [the mother] has made in her life can be consistent and maintained". Counsel for the director said the case against the father was "mainly concerns of parenting skills".

[13] The father has found his own apartment in the same apartment building as his mother. The social worker has visited the apartment and is satisfied that things were "going okay".

[14] The social worker, prior to the hearing of December 20, 2002, mediated the access arrangements between the mother and father when communication between the parents was difficult.

[15] The father obtained an interim interim custody order of the children in this Court on November 5, 2002.

[16] On December 20, 2002, the trial judge found that the director had reasonable and probable grounds to take the children into care and that they were in need of protection as to both the father and mother. The judge ordered a three-month supervision order, that the children were to reside with the father and the access of the mother to the children was to be overseen by the social worker. The court further ordered that the parents cooperate and provide information as requested by the director regarding the care of the children and their ability to care for them.

THE TRIAL DECISION

[17] The trial judge delivered a concise oral judgment. He referred to “mild suggestions of problems” that have arisen while the children have been in the care of the father. However, he rejected any suggestion the problems would merit apprehension under the *Children’s Act* in paragraph 4 of his decision:

> … I think a fair reading of the evidence is that that there have been no particular concerns that have surfaced, certainly nothing that would have justified an apprehension of the children.

[18] The trial judge then outlined the concerns of the director relating to the father’s history of involvement with the children. For example: the father did not intervene despite his awareness of the bad situation for the children in the mother’s home. The trial judge concluded at paragraph 8 that the father “had a fairly limited ability to do more at the time” owing to his job and lifestyle.

[19] I will summarize the remainder of the judgment:

1. there were grounds to apprehend the children while in the custody of the mother on August 24, 2002 (paragraph 11);

2. there were certainly grounds to continue to monitor the situation after the father assumed custody of the children (paragraph 11);

3. there are no immediate grounds to invoke the *Children's Act* at the time of the hearing on December 20, 2002. The judge found no imminent problems, difficulties or danger for the children (paragraph 11);

4. that does not mean there is not necessarily a need for protection for the children (paragraph 12);

5. even if there is no immediate need for protection on the day of the hearing, a need of protection may arise if there is a risk of problems in the future. The trial judge stated in paragraph 12:

> For example, if a parent, a custodial parent, had very difficult and serious problems, which would warrant the apprehension of his or her children, and that parent had recently straightened out his or her life, had the children back, was doing fine, and so on, the history of the matter and the newness of the recovery could nevertheless suggest that there was a risk of problems in the future, sufficient to justify a finding of need of protection, notwithstanding, on the day of the hearing, as I say, there were not immediate child protection concerns.

6. the need of protection is not determined from a particular moment in time but the whole history of the care of the children (paragraph 13);

7. where there have been past problems and the situation is newly improved, it may be prudent to monitor the situation for a period of time (paragraph 13);

8. the father is doing “extremely well” but he is new to the task of being a parent and new to his current lifestyle (paragraph 14);

9. there is also the factor that the mother continues to have supervised and unsupervised access which may be prudent to supervise (paragraph 15); and

10. finally, “all that is really required at this point is simply to ensure that the child protection concerns that let to the intervention in the first place have been put to rest” (paragraph 17).

[20] The trial judge clearly specified that the supervisory role of the director was not simply to facilitate the access of the mother but to supervise it as well as “refereeing the matter of access” between the mother and father (paragraph 21).

ISSUES

[21] The following issues arise:

Issue 1: What is the appropriate standard of review?

Issue 2: What is the time frame for determining need of protection?

Issue 3: Are the categories for need of protection found in s. 118 of the Act exhaustive?

Issue 4: Has the trial judge committed an error in applying the law to the facts?

THE *CHILDREN'S ACT*

[22] The following is a summary of the provisions of the *Children's Act* that apply to this case. The applicable sections are attached in Endnote A.

[23] Section 1 of the *Children's Act* states that the interests of the child are paramount and the best interests of the child should prevail.

[24] Sections 108 and 109 state that it is the policy of the director to promote family units and diminish the need to take children into care.

[25] The *Children's Act* contemplates a two-stage process for taking children into care. The first stage permits the apprehension of children under subsection 121(1) where the director has reasonable and probable grounds to believe that the child is in immediate danger to their life, safety or health.

[26] Section 123 of the *Children's Act* contemplates that a hearing be held within seven days to determine whether reasonable and probable ground exist for taking the child into care. Once that finding is made a hearing must be held within two months to determine whether the child is in need of protection. Lack of compliance with the time limits does not deprive a judge of jurisdiction to act.

[27] As a practical matter, the time frames set out in the Act are difficult to meet. If there was a serious challenge as to whether there were reasonable grounds for the apprehension, it would be very difficult for counsel for the parents to be prepared and for the court to have time available on such short notice as seven days.

[28] Thus, the practice is to grant an interim supervision order to provide a more reasonable time frame for a hearing to determine whether there were reasonable and

probable grounds for apprehension and whether the child is in need of protection on a balance of probabilities as required in section 128(1) of the *Children's Act*.

[29] Section 128 states that if the judge finds the child is in need of protection on the balance of probabilities, the judge shall either return the child to the parent, commit the child to the temporary care of the director or commit the child to the permanent care of the director.

[30] Section 118(1) sets out the categories for determining "need of protection" and the applicable section in this case is section 118(1)(c) which states that a child is in need of protection when the child is in the care of a parent who is unwilling to provide proper or competent care, supervision or control over the child.

Issue 1: What is the appropriate standard of review?

[31] The Supreme Court of Canada has recently reviewed the role of appellate courts and the standard to be applied on an appeal from a decision of a trial judge (see *Housen* v. *Nikolaisen*, [2002] 2 S.C.R. 235). Although the facts of that case were considered in the context of the law of negligence, *Van de Perre* v. *Edwards*, [2001] 2 S.C.R. 1014, para. 14, which was a family law case, clearly establishes that the scope of appellate review does not change because of the type of case on appeal.

[32] In Housen, the court began with reference to the familiar proposition that a court of appeal should not interfere with a trial judge's reasons, unless there is a palpable and overriding error. However, Iacobucci and Major JJ., writing for the majority, then considered the application of the standard of review to four questions:

1. questions of law;

2. questions of fact;

3. inferences of facts; and

4. questions of mixed fact and law.

[33] The standards of review can be summarized as follows:

1. On a pure questions of law, the standard of review is correctness; the appellate court can replace the opinion of the trial judge with its own (paragraph 8).

2. The standard of review for findings of fact is that they cannot be overturned unless the trial judge made a “palpable and overriding error” (paragraph 10).

3. The standard of review for inferences of fact should not have a lower standard of review than that for findings of fact. Thus, where evidence exists to support the trial judge’s inference of fact, it will be a difficult task to find a palpable and overriding error (paragraph 22). The appellate court cannot interfere with a factual conclusion simply because it disagrees with the weight to be assigned to the facts (paragraph 23).

4. The court distinguished findings of fact and inferences of fact from questions of mixed law and fact. The latter involves applying a legal standard to a set of facts (paragraph 26). Thus where the trial judge errs in the characterization of the legal standard, a correctness standard of review applies (paragraph 33).

Issue 2: What is the time frame for determining need of protection?

[34] This is a matter of law and the standard of review is correctness.

[35] Counsel for the father submitted that the trial judge erred in applying the grounds for apprehension on August 24, 2002, to the issue of need of protection. He argued that the grounds of August 24, 2002, should be only applied to the test of whether there were reasonable and probable grounds for apprehension of the children. He stated that only the evidence of the events after August 24, 2002, should be used to determine if the need of protection was proved on a balance of probabilities.

[36] There should be little disagreement about the time frame for establishing grounds for apprehension. It is a retrospective view that includes both the immediate grounds for apprehension and past history that may be relevant. This is supported by section 123(1)(a) which requires the director to give notice to the concerned parent “of the grounds then known to the director for the alleged need for protection of the child”, implying that other past grounds may be discovered.

[37] Given that the best interests of the child is the paramount consideration in the *Children’s Act*, I have difficulty accepting the submission that, as a general principle, the time frame for determining need of protection should be from the date of apprehension forward. Surely, it is in the best interests of the child to view the entire history of the parent-child relationship to make that determination.

[38] In my view, the trial judge correctly stated the law and the appropriate time frame in paragraph 13 of his decision:

> The issue of need of protection, in my view, is not a snapshot of a particular moment in time. The question of need of protection is one to be viewed having regard to the whole history of the care of the children. …

[39] This is the only sensible approach to determine need of protection. No doubt the conduct of parents may often improve between the apprehension date and the hearing date on need of protection. However, it is the whole history that may be considered to determine the potential risk for future harm.

[40] Thus, the father's history before and after the apprehension date is relevant to the determination of whether the children are in need of protection.

Issue 3: Are the categories for need of protection found in section 118 of the *Children's Act* exhaustive?

[41] The trial judge did not explicitly address this issue.

[42] Counsel for the father submitted that the categories for determining need of protection are found in section 118(a) to (l) of the *Children's Act* and there are no others. Counsel for the director confirmed that the director was proceeding under section 118(1)(c) which would require a finding on the balance of probabilities that "the child is in the care of a parent or other person who is unwilling to provide proper or competent care, supervision or control over him". The precise question is whether the director must show that the evidence fits a specific category of section 118(1) of the *Children's Act*.

[43] Counsel for the director relied upon *B.S.* v. *British Columbia (Director of Child, Family and Community Services)* (1998), B.C.L.R. (3d) 106 (B.C.C.A.). In that case, a child suffered from fetal alcohol syndrome, neo-natal abstinence syndrome, cerebral palsy, a mental disability and global development delay. The child was in several foster

homes until she was adopted by B.S. The child subsequently developed feeding problems and from August 1995 to June 1996 spent most of her time in hospital.

[44] During the last three months of hospitalization, a conflict developed between B.S. and the paediatrician. The paediatrician believed the child might die if food was not introduced into her digestive tract. B.S. was concerned about the pain to which the child was being subjected. Some of the doctors involved suspected that the child might have been the victim of Munchausen's Syndrome by Proxy, a condition where someone is being hurt by someone else in order to attract attention.

[45] Eventually, there was an order to provide nourishment to the child and later B.S. was excluded from the hospital. In August 1996, the child was formally removed from the care of B.S. The child began to recover and take her food orally. B.S. appealed. The British Columbia Court of Appeal dismissed the appeal.

[46] The trial judge found that B.S.'s intentional interference with medical procedures was most likely the cause of the child's illness. However, section 13(1) of the British Columbia *Child, Family and Community Service Act*, (the B.C. Act) sets out specific categories required for protection. The British Columbia Court of Appeal decided that the trial judge's findings did not fit the categories because of the difficulty of identifying the cause of the threat of harm. The specific issue for the Court of Appeal was whether the guiding principles in section 2 of the B.C. Act, making the safety and well-being of children paramount, could be relied on to provide protection for a child.

[47] Section 2(a) of the B.C. Act states the following:

> 2 This Act must be interpreted and administered so that the safety and well-being of children are the

> paramount considerations and in accordance with the following principles:
>
> (a) Children are entitled to be protected from abuse, neglect and harm or threat of harm;
>
> …

[48] The Court of Appeal was satisfied that section 2 could be relied on where the facts did not meet the precise circumstances enumerated in section 13(1). Three reasons were provided at paragraphs 21 – 24:

1. Section 2 of the B.C. Act provided the statement of a legal right that children are to be protected from abuse, neglect and harm or threat of harm.

2. Section 13(1) does not contain the words that a child is in need of protection "only in the following circumstances". In other words, the absence of the word "only" tends to confirm that section 13(1) did not create an exhaustive list.

3. The legislative purpose of the B.C. Act is to provide protection for every child who needs protection.

[49] The *Children's Act* does not contain a statement of a legal right as found in section 2(a) of the B.C. Act. The only equivalent in the *Children's Act* is that the best interests of the child prevail. However, the purpose of the *Children's Act* and its policy "to ensure the safeguarding of children" are similar to the B.C. Act. Also, the word "only" is not found in section 118(1) of the *Children's Act*.

[50] While the B.C. Act is not exactly the same as the *Children's Act*, I am of the view that the principle that there is an overriding objective to provide protection for children is

equally applicable to the *Children's Act*. Thus, there may be circumstances which do not fall within the precise categories of section 118(1) of the *Children's Act* which may permit a finding of "need of protection".

[51] I am also guided in this interpretation by the opinion of L'Heureux-Dubé J., speaking about the comparable Ontario legislation in *Catholic Children's Aid Society of Metropolitan Toronto* v. *C.M.,* [1994] 2 S.C.R. 165, paragraph 30:

> As a starting point for this analysis, one must look at the Act as a global legislative scheme whose purpose and rational should not be overshadowed by an unduly restrictive and strict interpretation of the Act, which would be at cross-purposes with the whole philosophy of the Act.

[52] This interpretation is also mandated by section 10 of the *Interpretation Act*, R.S.Y. 2002, c. 125, which requires every enactment to be given "the fair, large and liberal interpretation that best ensures the attainment of its objects".

[53] However, this is not an invitation to the director to craft new grounds for "need of protection". Rather, it is an interpretation that ensures the best interests of children are met despite the fact that a "need of protection", in exceptional circumstances, may not fall within the exact words of section 118(1)(a) to (l).

Issue 4: Has the trial judge committed an error in applying the law to the facts?

[54] In my view, the finding of the trial judge in this case involves a question of mixed fact and law. The trial judge has found certain facts about the father. He has applied the law of "need of protection" for the children to the father without specific reference to the wording of section 118(1)(c) of the *Children's Act*. Although the trial judge found that the father was doing "extremely well", he was new to the task of being a parent to both

children and new to his current lifestyle. I accept the facts as found by the trial judge but I question whether his application of the law is correct. The facts must fit into section 118(1)(c) or permit a finding of need of protection to ensure that the object of the *Children's Act* is attained as set out in the *B.S.* v. *British Columbia* case.

[55] I take no issue with the findings of the trial judge and the law applied with respect to the mother. Indeed, she consented to the supervision order and there was ample evidence of her inability or unwillingness to care for the children. The supervision order against the mother is not under appeal.

[56] With respect to the father, the trial judge made the following findings:

1. unlike the care of the mother, the care of the father did not justify an apprehension of the children (paragraph 4);
2. the father had a "limited ability" to do more for the children before the apprehension because of his job and lifestyle (paragraph 8);
3. no immediate grounds existed to invoke the *Children's Act*, and there was no imminent threat or danger to the children (paragraph 11),
4. the father was doing extremely well but he was new to the task and his current lifestyle (paragraph 14);
5. where there have been past problems and the situation is newly improved it may nevertheless be prudent to monitor the situation for some additional period of time (paragraph 13).

[57] The facts in this case are somewhat unique. In many cases, both parents have care and control of their children. When the children are apprehended by the director,

the evidence will apply to both parents. However, in this case, the father and mother were separated at the time the children were apprehended from the mother. The case proceeded on the grounds of apprehension against the mother and not the father. The children were quite appropriately placed in the father's care shortly after the apprehension from the mother. In my view, this requires that the evidence about each parent be considered separately. In this day and age where single parent families are common, there should not be an automatic application of the conduct of one parent to another. The trial judge proceeded on this basis as he carefully considered the evidence as it related to each parent. As I read the trial judge's decision, he did not make a finding that the grounds for apprehension from the mother could be applied to the father.

[58] In my view, the trial judge erred with respect to the father in failing to follow the two-step process of finding reasonable and probable grounds for apprehension followed by a determination of need of protection. The director's application was limited to grounds for apprehension of the children from the mother. There is ample evidence to support such a finding.

[59] However, no application was made by the director to apprehend the children from the father on grounds that related to the father. The trial judge found that there were no grounds to apprehend the children from the father. In my view, there can be no hearing to determine the need of protection for the children against the father without a finding of reasonable and probable grounds for taking the children into care as against the father pursuant to section 123(6).

[60] I note that the father obtained an interim interim custody order in this Court before the protection hearing. That order has no bearing upon the decision of the trial judge in

the child protection hearing. However, it could be argued that such a custody order requires the trial judge to consider the father as the only parent to which the children could be returned. In this case, such a ruling is not necessary as the mother consented to the supervision order and did not seek the return of the children to her.

[61] I now turn to the question of whether the need “to monitor” the father’s custody of the children based on his new parental role and new lifestyle can in law amount to “need of protection”.

[62] Counsel for the director relies upon the *B.S.* v. *British Columbia* case which expanded the categories of need of protection to include the wording of section 2(a) of the B.C. Act so that, in the words of Lambert J.A., a ten percent risk of future harm satisfied the test for a child protection order. Counsel submits that the trial judge’s decision that it would be prudent to monitor the father’s care of the children is based upon a balance of probabilities that there is a risk of future harm.

[63] It is my view that the facts in this case do not fall within section 118 of the *Children’s Act*. Further, they do not warrant an expansion of the categories for need of protection as set out in *B.S.* v. *British Columbia*. In this case, the father stepped into the parental role with the blessing of the director almost immediately upon the apprehension of the children from the mother. During the most part of four months of interim supervision by the director, the trial judge concluded the father was doing extremely well, subject to the concerns for monitoring which related to his past lifestyle and his newness to the role of parenting. However, these facts simply do no create a threat of harm to the children except in a very speculative sense. The need for protection must be based on evidence that the father’s conduct created harm or threat of harm for the

children. I conclude that the findings of fact as to the father do not in law create a need of protection.

[64] Child protection cases are very difficult cases because a judge will always prefer to err on the side of protecting the safety of children. This same desire no doubt permeates the decision-making of the director who will bear the brunt of public criticism should harm befall the children. While the best interests of the children should always be placed above parental rights, in this case there was no need of protection as to the father's care of the children but rather a lingering desire to monitor the father's parenting. That, in my view, does not permit nor require the intervention of the director under the *Children's Act.* To allow a supervisory order in this case would be tantamount to creating a new category for "need of protection" that cannot be justified even under a liberal interpretation of the *Children's Act.*

[65] I conclude that the trial judge has erred on a question of mixed fact and law. I accept his findings of facts but not his application of the law to those facts.

[66] I therefore set aside the trial judge's three-month supervision order against the father. The trial judge's order against the mother stands.

[67] There will be no order for costs.

_____

VEALE J.

ENDNOTE A

Best interest of child

1 This Act shall be construed and applied so that in matters arising under it the interests of the child affected by the proceeding shall be the paramount consideration, and if the rights or wishes of a parent or other person and the child conflict the best interests of the child shall prevail.

…

Policy

108 It is the policy of the Minister and the director to supply services as far as is reasonably practicable to promote family units and to diminish the need to take children into care or to keep them in care.

Implementation of policy

109 For the implementation of the policy described in section 108, the director shall take reasonable steps to ensure the safeguarding of children, to promote family conditions that lead to good parenting, and to provide care and custody or supervision for children in need of protection.

…

Children in need of protection

118(1) A child is in need of protection when

(a) the child is abandoned;

(b) the child is in the care of a parent or other person who is unable to provide proper or competent care, supervision or control over the child;

(c) the child is in the care of a parent or other person who is unwilling to provide proper or competent care, supervision or control over him;

(d) the child is in probable danger of physical or psychological harm;

(e) the parent or other person in whose care the child is neglects or refuses to provide or obtain proper medical care or treatment necessary for the health or well-being or normal development of the child;

(f) the child is staying away from the child's home in circumstances that endanger the child's safety or well-being;

(g) the parent or other person in whose care the child is fails to provide the child with reasonable protection from physical or psychological harm;

(h) the parent or person in whose care the child is involves the child in sexual activity;

(i) subject to subsection (2), the parent or person in whose care the child is beats, cuts, burns or physically abuses the child in any other way;

(j) the parent or person in whose care the child is deprives the child of reasonable necessities of life or health;

(k) the parent or person in whose custody he is harasses the child with threats to do or procures any other person to do any act referred to in paragraphs (a) to (j); or

(l) the parent or person in whose care the child is fails to take reasonable precautions to prevent any other person from doing any act referred to in paragraphs (a) to (j).

Taking of children into care

Powers of director, agent or peace officer

121(1) If the director, an agent or a peace officer has reasonable and probable grounds to believe and does believe that child is in immediate danger to their life, safety or health, the director, agent or peace office may, without a warrant,

(a) take the child into care and begin proceedings before a judge under this Part;

(b) take the child to a place of safety and then, without taking proceedings before a judge under this Part, return the child to a concerned parent, or other person entitled to the child's care and custody, on the request of that concerned parent or other person; or

(c) in the case of a child already in the care of the director and who absconded or was being detained without lawful authority and without the director's

consent, return the child to any place the director designates.

…

Procedure after child is taken into care

123(1) Subject to paragraphs 121(1)(b) and (c) and 121(7)(b) and (c), if a child is taken into care under section 121 the director shall,

(a) as soon as practicable, give reasonable notice in writing to the concerned parent, or other person entitled to the care or custody of the child, of the place and time of a hearing to be held under subsection (5) and of the grounds then known to the director for the alleged need for protection of the child, which grounds may be stated in any of the words set out in subsection 118(1); and

(b) so that a hearing may be held under subsection (5), appear before a judge and make any application the director thinks there are grounds to make.

…

(4) The hearing under subsection (5) shall be at a time not later than seven days after the child is taken into care.

(5) The judge shall hold a hearing as soon as reasonably practicable after being asked to do so for the purpose of

(a) determining the identify of the child and concerned parents or other persons entitled to the child's care or custody; and

(b) determining whether reasonable and probable grounds exist for taking the child into care.

(6) If, at the conclusion of the hearing under subsection (5), the judge finds that reasonable and probable grounds do exist for taking the child into care, the judge shall

(a) subject to subsection (9), set a date and place for a hearing before a judge to determine, within two months, whether the child is in need of protection and what order ought to be made in consequence of that determination;

(b) order that the child remain in the temporary care and custody of the director until the outcome of the hearing referred to in paragraph (a); and

(c) if a concerned parent, or other person entitled to the care or custody of the child, is not present, give direction as to the manner of service of the notice of the hearing referred to in paragraph (a) on the absent concerned parent or other person entitled to the care or custody of the child.

…

(9) The hearing before a judge to determine whether a child is in need of protection and what order should be made in consequence of that determination shall be held and the determination shall be made within two months of the day the hearing under subsection (5) is begun, unless the director or a concerned party seeks a delay, and a judge is satisfied that the delay will not cause any prejudice to the best interests of the child and is necessary for the proper conduct of the hearing.

(10) There shall be a rebuttable presumption that failure to comply with the time limits specified in this section is prejudicial to the interests of the child, and it is therefore the duty of the director, the concerned parents and the judge to comply with those time limits.

(11) Lack of compliance with the time limits specified in this section shall not deprive any judge of jurisdiction to act at the request of the director or a concerned parent after expiration of the time, and a judge may act under this Part at the request of either.

…

Orders on conclusion of hearing

128(1) If, at the conclusion of the hearing of an application under this Part, the judge finds on the balance of probabilities that the child is a child in need of protection, the judge shall

(a) allow the child to be returned into the care of the concerned parent, or other person entitled to his care or custody, in whose care and custody the child was when he was taken into care or when proceedings were commenced pursuant to section 120;

(b) commit the child into the temporary care and custody of the director; or

(c) commit the child to the permanent care and custody of the director.

(2) If the child is in the care of the director and, at the conclusion of the hearing of an application under this Part the judge finds on the balance of probabilities that the child is not a child in need of protection, the director shall return the child to the concerned parent, or other person entitled to the child's care, in whose care and custody the child was when taken into care.

(3) The director shall return the child pursuant to subsection (2) as soon as the return may reasonably be done, having regard to the best interests of the child, but the return of the child shall not be delayed more than 48 hours unless a judge authorizes a longer delay.

Order to return child to parent or other person

129 If the judge makes an order under paragraph 128(1)(a),

(a) the director shall have a power of supervision in respect of the care of the child during the time that the order is in effect;

(b) the order shall be in effect for any time specified by the judge, but that time shall not exceed 12 months for a child under two years of age at the date of taking into care or of issuance of the notice to bring, and shall not exceed 15 months for a child under four years of age at the date of taking into care or of issuance of the notice to bring, and shall not exceed 24 months in any other case; and

(c) the order may contain any reasonable conditions binding on and in respect of the conduct of the person to whose care the child is allowed to be returned that the judge thinks are necessary.

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