

WARNING

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

This is a case under Part III of the *Child and Family Services Act* and is subject to one or more of subsections 45 (7), 45(8) and 45(9) of the Act. These subsections and subsection 85(3) of the *Child and Family Services Act*, which deals with the consequences of failure to comply, read as follows:

45.—(7) Order excluding media representatives or prohibiting publication.—

The court may make an order,

. . .

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

where the court is of the opinion that . . . publication of the report, . . ., 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.

(8) *Prohibition: 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) *Idem: order re adult.*— 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.

. . .

85.—(3) Idem.— A person who contravenes subsection 45(8) or 76(11) (publication of identifying information) or an order prohibiting publication made under clause 45(7)(c) or subsection 45(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.

CITATION: *Children’s Aid Society of Toronto v. S.C.*, 2017 ONCJ 725
DATE: November 2, 2017
COURT FILE NO. C57964/12

ONTARIO COURT OF JUSTICE

B E T W E E N:

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**CHILDREN’S AID SOCIETY OF
TORONTO**

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MIRA PILCH, for the APPLICANT

APPLICANT

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- and -

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)

S.C. and I.K.

**JEROME OLORUNPOMI, for the
RESPONDENT, S.C.**

**THE RESPONDENT, I.K., acting in
person**

RESPONDENTS

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) **HEARD: IN CHAMBERS**

JUSTICE S.B. SHERR

ENDORSEMENT

Part One – Introduction

[1] The respondent S.C. (the mother) has brought a Form 14B motion¹ seeking leave of the court to bring a motion for access to her two children, J.K., age 7 and R.K., age 29 months.

[2] The respondent, I.K., (the father), has also brought a Form 14B motion seeking leave of the court to bring a status review application regarding J.K.

[3] J.K. and R.K. have been made crown wards without access to the respondents (the parents).

[4] The applicant, Children’s Aid Society of Toronto, in its Form 14B response seeks dismissal of the motions.²

[5] The parents’ motions will be dismissed for the reasons that follow.

Part Two – Procedural history

[6] The procedural history is important to understand why the parents’ motions are being dismissed.

[7] On October 15, 2014, after a 6-day trial, Justice Geraldine Waldman made J.K. a crown ward without access to the respondents.

[8] The respondents appealed Justice Waldman’s decision. The appeal was dismissed by Justice Ruth Mesbur of the Superior Court of Justice on April 13, 2015.

[9] The respondents appealed Justice Mesbur’s decision to the Court of Appeal. This appeal was dismissed on January 4, 2016.

[10] The respondents’ second child, R.K., was born in [...] 2015. R.K. was apprehended at birth by the society. A protection application was started.

[11] The respondents did not defend the protection application. Justice James Nevins made R.K. a crown ward, without access, on August 18, 2015. This decision was not appealed.

[12] The respondent I.K. (the father) issued a status review application regarding R.K. in this court on March 23, 2016. He sought an order that R.K. be placed with him.

¹ These are procedural, uncomplicated or unopposed motions that are read and determined by judges in chambers.

² The mother subsequently filed another Form 14B motion asking to strike the society’s Form 14B response to her motion. This Form 14B request made little sense and was entirely devoid of merit.

[13] The status review application went to trial on October 31, 2016. The mother did not participate in the case.

[14] On November 16, 2016, Justice Debra Paulseth dismissed the father's status review application regarding R.K. See: *The Children's Aid Society of Toronto v. S.C.*, 2017 ONCJ 240.

[15] The father appealed Justice Paulseth's decision regarding R.K. to the Superior Court of Justice.

[16] On December 2, 2016, the father issued a status review application regarding J.K. He did not seek leave of the court prior to issuing his application, as required by subsection 65.1 (5) of the *Child and Family Services Act* (the Act). Leave was required as J.K. had lived continuously with the same foster parent for over two years immediately prior to the father's application.

[17] On January 18, 2017, on consent, the father withdrew his status review application regarding J.K., without prejudice to his ability to bring a motion to obtain leave to bring a status review application.

[18] The father brought the leave motion regarding J.K. The mother did not participate in the matter. This court dismissed the father's motion on April 6, 2017. The reasons are set out in *Children's Aid Society of Toronto v. S.C.*, 2017 ONCJ 240.

[19] The father continued to fax motions to the trial coordinator's office, each essentially asking for the same relief. The court, in a written endorsement dated May 15, 2017, found that the father's actions amounted to an abuse of process. The court ordered that:

- a) The father shall not file or send any documents to the court seeking permission to bring a motion for leave to bring a status review application regarding J.K; bring a status review application regarding R.K; or bring any motion related to either child prior to the expiration of the 6 month statutory time frame set out in subsection 65.1 (7) of the Act, as it applies to each child.
- b) If the father seeks permission to bring a motion for leave to bring a status review application for J.K., or bring a status review application for R.K. after the 6 month time frame, he is to file affidavit evidence setting out the date of this court's decision and if the decision was appealed, the date the appeal was disposed of or abandoned.
- c) Court staff should not accept any status review application, motion forms (Form 14B), or notices of motion (Form 14) from the father, or schedule any

court appearances regarding R.K. or J.K. prior to the expiry of the statutory 6 month period set out in subsection 65.1 (7) of the Act, as it applies to each child.

- d) If the father serves the society with any motion or status review application in contravention of this order, the society does not have to respond, unless otherwise directed by the court.
- e) If the father continues to fax or otherwise send any motions to the court in contravention of this order they will not be considered.

See: *Children's Aid Society v. S.C. and I.K.*, 2017 ONCJ 717.

[20] J.K. was placed for adoption on April 13, 2017.

[21] The father's appeal regarding R.K. was dismissed for delay on June 8, 2017 in the Superior Court of Justice by Justice Carolyn Horkins.

Part Three – Discussion

[22] The mother's request for leave to bring an access motion is improperly framed.

[23] To bring a motion for access, there must be an ongoing proceeding. Presently there is none.

[24] The proper procedure is for the mother to bring a status review application seeking to change the final order of Justice Nevins, dated August 18, 2015, by granting her access to the children.

[25] However, there are restrictions on the parents' ability to bring a status review application.

[26] The first restriction is contained in subsection 65.1 (9) of the Act. This subsection reads as follows:

No review if child placed for adoption

(9) No person or society shall make an application under this section with respect to a Crown ward who has been placed in a person's home by the society or by a Director for the purposes of adoption under Part VII, if the Crown ward still resides in the person's home.

[27] Since J.K. has been placed for adoption, the parents can no longer bring a status review application regarding him.

[28] The second restriction is contained in subsection 65.1 (7) of the Act which reads as follows:

Six-month period

- (7) No application shall be made under subsection (4) within six months after the latest of,
- (a) the day the order was made under subsection 57 (1) or 65.2 (1), whichever is applicable;
 - (b) the day the last application by a person under subsection (4) was disposed of; or
 - (c) the day any appeal from an order referred to in clause (a) or a disposition referred to in clause (b) was finally disposed of or abandoned.

[29] The appeal regarding R.K. was dismissed on June 8, 2017. This means that the earliest date that a status review application can be brought by either parent regarding R.K. is 6 months after that date. There is an exception contained in subsection 65.1 (8) of the Act,³ but there is no evidence that the exception applies in this case. The parents cannot bring a status review application regarding R.K. at this time.

[30] The six-month restriction in subsection 65.1 (8) of the Act has a specific purpose. It is to prevent a child from being left in limbo due to a succession of appeals and status review applications being brought by parents determined to prevent the child from being placed for adoption.

[31] Subsection 1 (1) of the Act sets out that the paramount purpose of the Act is to promote the best interests, protection and well-being of children. It is clear that section 1 of the Act and the timelines outlined in section 70 of the Act focus on early permanency planning and to avoid delays in litigation. See: *Children's Aid Society of the Regional Municipality of Waterloo v. L.M.*, 2015 ONCJ 103, par. 31.

[32] A child's need for permanency planning within a timeframe sensitive to that child's needs demands that the legal process not be used as a strategy to "buy" a parent time to develop an ability to parent. See: *Children's Aid Society of Toronto v. R.H.*, [2000] O.J. No. 5853 (Ont. C.J.).

³ Subsection 65.1 (8) of the Act reads as follows:

Exception

- (8) Subsection (7) does not apply if,
- (a) the child is the subject of,
 - (i) an order for society supervision described in clause 65.2 (1) (a),
 - (ii) an order for custody described in clause 65.2 (1) (b), or
 - (iii) an order for Crown wardship under subsection 57 (1) or clause 65.2 (1) (c) and an order for access under section 58; and
 - (b) the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out.

[33] The six-month waiting period in subsection 65.1 (8) of the Act is essential to give children the opportunity to have a permanent adoptive home found for them.

[34] The third restriction is that R.K. has now resided in the same foster home for over two years. Subsection 65.1 (5) of the Act provides that a parent cannot bring a status review application in these circumstances without first obtaining leave of the court. This subsection reads as follows:

When leave to apply required

65.1 (5) Despite clause (4) (b), a parent of a child shall not make an application under subsection (4) without leave of the court if the child has, immediately before the application, received continuous care for at least two years from the same foster parent or from the same person under a custody order.

[35] The result of these restrictions is as follows:

- a) The parents cannot bring a status review application regarding J.K.
- b) The parents must wait until December 8, 2017 to bring a motion seeking leave to bring a status review application regarding R.K. This would not be a Form 14B motion, but rather a Form 14 motion, with supporting affidavits, to be heard, on notice to all parties, in open court.
- c) The parents will not be able to bring a status review application regarding R.K. if he is placed for adoption before a leave motion is issued.

Part Six - Conclusion

[36] The parents' motions are dismissed.

[37] The parents are prohibited from bringing any further court proceedings in this matter before December 8, 2017.

Released: November 2, 2017
Justice S.B. Sherr