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CAS defied order to return boy

Prescott and Russell branch, worker guilty of contempt; thought it was in child's interests

By Jake RUPERT

The Children's Aid Society of Prescott and Russell and one of its workers have been found guilty of contempt of court for not returning a two-year-old boy to his parents despite a judge ordering them to do so. They will be sentenced next month.

The lawyers who successfully prosecuted the contempt charge on behalf of the child's parents, who live in Hawkesbury, but cannot be identified in order to protect the identity of the child, believe this is a judicial first.

The society and its worker, Marie-Claude Belanger, were convicted last week after Ontario Superior Court Justice Michel Charbonneau found they deliberately didn't return the child, without legal justification, after a judge ordered them to do so following a five-day trial in October 2003. They said they thought they were acting in the child's best interests.

Julie Bergeron, who represented the mother, said she and the father's lawyer, Jocelyne Paquette-Landry, haven't decided on what sentence they will ask the judge to impose because they can find no precedent. A stiff fine for the organization and community work for Ms. Belanger is her best guess at the moment.

Whatever the eventual sentence Judge Charbonneau passes, however, Ms. Bergeron said she hopes it's strong enough to send the message that this type of behaviour is never acceptable.

"The judge's order was and I still don't understand why they didn't return the child," Bergeron said. "You have to respect court orders for the system to work."

In his reasons for conviction, Judge Charbonneau was even more explicit than Ms. Bergeron.

"Rulings of the court must be respected and obeyed because the community has chosen democratically to give the courts the mandate to deal with these matters," he said. "The survival of our democratic society and good public order depends on this."

Raymond Lemay, director of the CAS in Prescott and Russell, said at all times the worker and the society did the things they did because they felt it was in the best interests of the child, and that an appeal may be launched.

"We're consulting our lawyers, and reviewing the decision to see if there are grounds for an appeal," he said. He added that Ms. Belanger was simply following orders by not returning the child. "She didn't act on her own. We, as an organization, take full responsibility for what went on, and what will happen as a result."

The boy was born in April 2001. His parents are in their 30s. They earn modest salaries, but alcohol abuse is a concern for both. The boy was taken from his parents in November 2002 due to these concerns, and from then until March 2003, the parents were permitted three visits of three hours per week.

In March, the society cut the visits to one three-hour period a week and decided it would ask a court to order the boy be made a permanent ward of the state and put up for adoption.

In October, a five-day trial was held in which the society brought evidence to show the parents were hopeless drunks, prone to violence, who should never be allowed to see their boy again. The parents'

lawyers argued the boy should be returned.

On Oct. 24, a Friday, the judge ruled the child should be returned to the parents no later than the next day. He found the child still needed protection and ordered the society to supervise the parents for one year on conditions. Before the judge finished the decision, the CAS lawyers asked that the judge make an inspection of the parents' home a condition of the child's return.

The judge heard the argument and decided against this. Outside the court after the ruling, Ms. Belanger asked the parents to submit to an inspection.

They refused, then went to dinner where they consumed some alcohol.

At roughly 9 a.m. the next morning, Ms. Belanger, accompanied by fellow worker Micheline Surprenant, showed up at the parents' home without the child and proceeded to do an inspection.

In an affidavit filed in court, Ms. Belanger says essentially the house was an unhealthy, dangerous wreck. She notes mildew everywhere, broken windows, dirty dishes, no fresh food and general filth, among other things.

After the unauthorized inspection, she left and discussed the alleged situation with her supervisor, Francine Groulx, who made the decision to proceed with a reaprehension of the child.

Ms. Belanger then got two police officers to come with her to inform the parents that they wouldn't be getting their boy back until all the conditions she imposed were met.

In their affidavits, the parents say the house wasn't 100 per cent and they needed a few things, but that Ms. Belanger's description of conditions was grossly exaggerated. Still, they went out that day and bought a number of things, including a new bed for the boy, did some minor repairs on cupboards and cleaned.

The next day, they called Ms. Belanger and told her everything was done and to come over to check. Ms. Belanger came the next day, a Monday, this time with two police officers and a municipal building inspector, checked out the place and told the parents she'd get back to them.

After this, the parents called their lawyers, who put together a notice of contempt motion and served it on the society the next day. After getting the notice, Ms. Belanger met with her supervisor, and they decided to return the child.

At contempt hearings for knowingly breaching court orders where it is clear the orders were breached, lawful justification is the only defence, so that's what lawyers representing the society and Ms. Belanger argued.

Judge Charbonneau rejected this and concluded Ms. Belanger and the society didn't like the judge's order sending the boy back to his parents and set out to find reasons not to obey it.

What led him to the conclusion, he said were, among other things: the fact the society didn't bring up the state of the house at the original trial; the police officers, municipal building inspector, and two other workers who saw the house didn't testify to corroborate Ms. Belanger's findings that the house was unfit; many of the findings were minor in the extreme; the child wasn't returned until after the parents' lawyers gave notice of contempt; and Ms. Belanger showed up unannounced at the house without the child.

"Ms. Belanger undoubtedly believed she had to disobey the order to protect the child, but one must not forget there-were specific reasons for the order," Judge Charbonneau said.

"Everyone will agree that the system of child protection ... can only function if court orders are strictly observed. It's essential to the whole system, and consequently it is essential to the protection of children.

"If a worker or society can overlook an order because it believes an order isn't in the interests of the child, the whole system is compromised."

After this, he said with reluctance he-convicted Ms. Belanger and the Children's Aid Society of Prescott and Russell of knowingly disobeying a court order without lawful excuse.

No date has been set for sentencing.