Date: 20010615
Docket: 169315

NOVA SCOTIA COURT OF APPEAL
[Cite as: *T.B. v. Children's Aid Society of Halifax*, 2001 NSCA 99]

Roscoe, Bateman and Saunders, JJ.A.

BETWEEN:

T. B.

Appellant

- and -

CHILDREN'S AID SOCIETY OF HALIFAX and
S. M. R.

Respondents

REASONS FOR JUDGMENT

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Counsel: Donna D. Franey for the appellant
Peter C. McVey and Aleta C. Cromwell for the respondent Children's Aid Society of Halifax
Krista Lee Forbes for the respondent S. M. R.

Appeal Heard: May 17, 2001

Judgment Delivered: June 15, 2001

THE COURT: Appeal dismissed per reasons for judgment of Saunders, J.A.; Roscoe and Bateman, JJ.A. concurring.

Publishers of this case please take note that s.94(1) of the **Children and Family Services Act** applies and may require editing of this judgment or its heading before publication. Section 94(1) provides:

> 94(1) 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 pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

Editorial Notice

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Saunders, J.A.:

Introduction

[2] In this appeal we are asked to review an order for permanent care and custody issued pursuant to the **Children and Family Services Act,** S.N.S. 1990, c. 5 ("**CFSA**"). It is alleged that the trial judge erred in law by failing to properly consider a family placement as required by s. 42(3) of the **Act**.

[3] The appellant, T. B., is the father of a son, DWTB (the child) born to the respondent, S. R., on March *, 1999.

[4] Less than three months after the child's birth, the Children's Aid Society of Halifax commenced proceedings alleging that DWTB was in need of protective services as provided in the **CFSA**. On July 6, 1999, an interim order was granted by the Supreme Court (Family Division) which provided for the continued care and custody of the child with his mother, subject to agency supervision. The child's father was ordered to have no contact with Ms. R. in the presence of their child, but was allowed supervised access as arranged by the agency in consultation with Ms. R..

[5] There then ensued a string of protection-related proceedings. On September 29, 1999, following a hearing before Justice Douglas Campbell of the Nova Scotia Supreme Court (Family Division), it was determined that the child was in need of protective services within the meaning of s. 22(2)(g) of the **Act**. Justice Campbell ordered that the child be taken into care and placed in a foster home.

[6] Between September, 1999, and October, 2000, eight different hearings took place providing for the child's continuing temporary care and custody. For example, on October 18, 1999, a hearing was conducted by Campbell, J. to review the interim order granted September 29, 1999. A further interim order was issued providing for continued agency care with supervised access. The matter was adjourned to December 15, 1999, for the start of a disposition hearing. It is from that date that the trial judge and counsel calculated their twelve-month timetable (s. 45(1)(a) CFSA).

[7] On June 15, 2000, Nina Woulff, Ph.D., psychologist, completed an up-dated parental capacity assessment with respect to the parents of the child, as had been ordered by the court. The assessment recommended a return of the child to the care of S. R., who was not then residing with T. B.. This plan was initially implemented by the agency, but it was suspended in mid-July,

2000, when both the appellant and S. R. were charged with uttering death threats against their property manager. Ms. R. was evicted from her apartment shortly thereafter and came to reside with Mr. B..

[8] On August 10, 2000, the agency prepared a plan recommending that an order for permanent care and custody be granted. Trial dates were set.

[9] The permanent care hearing was conducted by Justice Campbell on November 20, 21, 22, 23 and December 5, 2000. The court emphasized the importance of rendering a final disposition order prior to the statutory deadline for such orders which was due to expire December 15, 2000. I will deal with the trial judge's reasons for extending time to deliberate and file his decision later in this judgment.

[10] On January 12, 2001, Justice Campbell filed a written decision placing the child in the permanent care and custody of the agency without provision for access. An order confirming his decision was granted January 15, 2001.

[11] T. B. has appealed. S. R. has not. Her counsel attended the appeal as an observer and while she did not make any submissions, she did advise us that Ms. R. supported Justice Campbell's decision as being in her child's best interests.

[12] Ms. T. B. is the appellant's half-sister. She is not a party to these proceedings. She is thirty-three years of age and lives in Halifax with her own 16-year-old son. She works as a *.

[13] Justice Campbell is alleged to have erred by failing to consider placing the child with Ms. B. and in failing to appreciate from the evidence that the agency had not taken reasonable steps to even consider such a family placement, all contrary to s. 42(3) of the **CSFA**.

[14] In his claim for relief the appellant asks that the child remain in the temporary care and custody of the agency and that the agency be obliged to file with the Supreme Court (Family Division) and counsel a full report addressing the option of a family placement for DWTB.

Reasons

[15] I am unable to accept the appellant's submissions. Having considered the arguments of counsel and after reviewing the record, I am satisfied that Campbell, J. made no error in law.

[16] The standard for appellate review in proceedings such as this one, are well known. The trial judge's findings will not be set aside unless the judge has

acted upon a wrong principle of law or committed an obvious and critical error in appreciating or applying the evidence.

[17] In **Nova Scotia (Minister of Community Services) v. S.M.S. et al.** (1992), 112 N.S.R. (2d) 258 (C.A.), this court described the standard as follows at pp. 268-9:

> It is no doubt true that an appeal court should not interfere with findings of fact made by a trial tribunal unless they are clearly wrong. The trial judge must have made a 'manifest error' or some 'palpable and overriding error' - see **Talsky v. Talsky**, 7 N.R. 246; [1976] 2 S.C.R. 292, at p. 294, and **Stein et al. v. The Ship "Kathy K" et al.**, 6 N.R. 359; [1976] 2 S.C.R. 802, at p. 808. It has, however, been said on many occasions that an appeal court is free to draw its own inferences from proven facts ...
>
> A trial judge in dealing with the custody of an infant is called upon to exercise a discretion which it is recognized will only be interfered with if he has gone wrong in principle or overlooked material evidence. It was put thus by Viscount Simonds in the following passages in **McKee v. McKee**, [1951] A.C. 352, Privy Council, at p. 360:
>
> > Further, it was not, and could not be, disputed that the question of custody of an infant is a matter which peculiarly lies within the discretion of the judge who hears the case and has the opportunity generally denied to an appellate tribunal of seeing the parties and investigating the infant's circumstances, and that his decision should not be disturbed unless he has clearly acted on some wrong principle or disregarded material evidence.

[18] In argument, the appellant urged that a "diminished" level of deference was warranted in this case because four different judges presided at various stages of these proceedings. I cannot agree. Justice Campbell's experience with this case was hardly fleeting. He had already presided over earlier hearings involving these same parties and was very familiar with both their troubled history and the serious concerns which first prompted the agency's intervention. It is also significant that Justice Campbell presided during many of the hearings involving this child's older brother. The record of those parallel proceedings was admitted by consent of counsel for Ms. R. and counsel for Mr. B., and entered as evidence in this case by order of Campbell, J. issued pursuant to s. 96(1)(a) of the **Act**. There is nothing in

the record before us to suggest that involvement, on other occasions, by other members of the Supreme Court (Family Division) in Chambers should in any way diminish the deference owed to Justice Campbell's findings in this case.

[19] The essence of Mr. B.'s appeal is that the trial judge erred in law by failing to address whether the agency had taken reasonable steps to consider placing the child with Mr. B.'s half-sister, T.. This failure, in Mr. B.'s submission, constituted a violation of the court's obligations under the **CFSA**. In advancing the argument, the appellant places particular emphasis on the decision of Justice Cromwell, writing for this court in **Family and Children's Services of Kings County v. B.D.** (1999), 177 N.S.R. (2d) 169 ("**BD**").

[20] Before commenting upon Justice Cromwell's observations in **BD**, it would be helpful to recall the provisions of s. 42 of the **CFSA** and explain their proper application to the circumstances of this case.

> **Disposition order**
>
> **42 (1)** At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:
>
> (a) dismiss the matter;
>
> (b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
>
> (c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
>
> (d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;
>
> (e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;
>
> (f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.
>
> **Restriction on removal of child**

(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

(a) have been attempted and have failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child.

Placement considerations

(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the childs community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

Limitation on clause (1)(f)

(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[21] It is obviously true that a trial judge is required to consider each of the possible dispositions set forth in s. 42 of the **Act** before ordering that a child be removed from the care of its parent or guardian. Quite apart from these requirements, the **Act** directs that the paramount and overriding consideration must always be the best interests of the children.

[22] Care must also be taken when considering other cases that have shaped the interpretation of s. 42(3). Those decisions followed hearings well within the maximum time period for the granting of disposition orders. Here, by contrast, Justice Campbell was out of time. Section 42(1) begins:

> At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests ...

[23] There then follow six alternatives open to the court from (a) through (f).

[24] Section 42(3) states that the court must consider whether or not "...it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1)". ... (underlining mine)

[25] Thus it can be seen that the operative placement provision I have just cited, s. 42(1)(c) of the **CFSA**, allows a type of disposition order. But such an order is only available for so long as the court has the jurisdiction to grant it. The extent of the court's jurisdiction is limited by s. 45(1) of the **CFSA**, which fixes the maximum time limit for such orders. As the proceeding nears a conclusion, the opportunity to grant disposition orders under s. 42(1)(c) diminishes until the maximum time limit is reached, at which point the court is left with only two choices: one or the other of the two "terminal orders". That is to say, either a dismissal order pursuant to s. 42(1)(a) or an order for permanent care and custody pursuant to s. 42(1)(f).

[26] While no such intervention occurred here, it should be remembered that in cases where a family member has made an application for custody pursuant to the **Family Maintenance Act**, R.S.N.S. 1989, c. 160, an order for custody could also be made in the event that the **CFSA** action were dismissed.

[27] One ought not lose sight of the relationship between s. 42(3) and 42(1)(c). Once the maximum time limit is reached, s. 42(3) can no longer be determinative, since temporary placement with a relative, neighbour or other extended family is no longer available. At the end of the time limits, once the agency establishes that the child remains in need of protective services, and subject to the court's authority to extend time in the rare circumstances I have described in paragraph 56 infra., the determination for the court becomes one of what final or "terminal" order is in the child's best interests. At that stage during such a proceeding, consideration of family relationships is required only because it is one of several factors which are to form part of the child's best interests as defined by s. 3(2) of the **Act**, not because s. 42(3) continues to require such consideration.

[28] I am satisfied that Justice Campbell's decision conforms to the distinctions and principles I have just enunciated.

[29] I turn now to that portion of Cromwell, J.A.'s comments in **BD** emphasized by the appellant. I point out that all Justice Cromwell was approving was the trial judge's characterization of the effect of s. 42(3) while at the same time recognizing that s. 42(3) must be interpreted and applied in the context of the **Act** as a whole and in light of its paramount purpose, that being to protect a child's best interests.

> [15] The judge addressed himself specifically to s. 42(3) of the **Act**. He stated that the section is mandatory and that there is a positive obligation on the Agency and the court to see to it that *reasonable* family or community options are considered. I agree with this statement of the effect of the section. ... (italics mine)

[30] Neither this statement of Cromwell, J.A., nor the remarks of the trial judge which he approved, varied or added to the agency's responsibilities defined by the terms of the **CFSA**.

[31] Justice Cromwell's words should not be interpreted as imposing either upon the agency or the court a statutory burden to investigate and exhaust every conceivable alternative, however speculative or fanciful. He spoke of *reasonable* family or community options. Neither the agency nor the court is obliged to consider unreasonable alternatives. Their statutory obligation is nothing more than to assess the reasonableness of any family or community alternatives put forward seriously by their proponents. By "reasonable" I mean those proposals that are sound, sensible, workable, well conceived and have a basis in fact.

[32] The onus of presenting such a reasonable alternative must surely be upon the person or party seeking to have it considered. It is hardly the responsibility of the agency or the court to propose the alternative, provide the resources for its implementation, or shepherd the idea through to completion.

[33] Applying those principles to the circumstances of this case, I am satisfied that the agency did all it was obliged to do throughout these proceedings. I am also satisfied that the trial judge's decision reflects both a careful appreciation of the evidence, its proper application to the issues before him, and compliance with the statutory requirements of the **Act**.

[34] The trial judge paid close attention to this family's troubled history. He had the advantage of the views expressed by eleven skilled counsellors and experts whose reports and direct testimony provided vivid confirmation of

the serious emotional, behavioural and mental difficulties which so frequently characterized this family's situation. Experts included psychologists, social workers, parental capacity assessors, family counsellors and a psychiatrist.

[35] S. R. was described as having had a "horrific childhood" which prevented her from having any attachment to her parents and suffering greatly as a result. She had three children by different fathers. In 1991 her first child was placed in the care of her grandmother. On May 11, 2000, an order for permanent care was granted to protect her second child, a son, A.F., born January *, 1993.

[36] As noted earlier, agency involvement with this, her third child, began in the summer of 1999 when he was less than three months of age.

[37] Ms. R.'s mental problems will require regular and on-going medical attention. They were described by Justice Campbell in this way:

> There was significant expert opinion evidence before me that the mother would require significant long term psychological and psychiatric intervention in order to deal with her issues . . .
>
> ... Despite the various comments in the evidence with respect to the mother's progress in regard to her issues, I am satisfied that there is no such likelihood in the short to medium term . . .

[38] As for the child's father, Justice Campbell described T. B. as having:

> . . . also had a seriously troubled childhood and younger adulthood. He indicates that he was traumatized by abuse he suffered as a youth in institutional settings. He admits to a lengthy criminal record and to serious drug use and abuse over many years. He has a learning disability and had a severe difficulty with impulse control and resorts to aggressive and intimidating behaviours. In addition to the evidence on this point, his behaviour in the courtroom was very consistent with this description. On many occasions during the course of the trial it was necessary for me to admonish him for his behaviours which included speaking in loud tones to witnesses, angry outbursts directed to various people, and including an angry removal of himself from the courtroom and interrupting the proceedings generally.

[39] As late as June, 2000, when Mr. B. and Ms. R. continued to present a joint plan for their child, Dr. Woulff described the parents as having had a:

> ...long and vividly documented history of personality problems which involve mood disturbance, impulsivity and aggressiveness....

Dr. Woulff described the mother as having:

> . . .characteristic features of borderline and anti-social personality disorders.

and the father, T. B., as displaying:

> . . . features of anti-social personality disorder and attention deficit disorder.

Dr. Woulff said their:

> . . . relationship has been characterized by a high level of verbal aggression which is similar to that found in violent couples . . .

[40] In her written report that summer, Dr. Woulff concluded that the goal of reuniting this family had reached a critical point. She recommended that there be a controlled and planned return of the child instituted immediately but that the question of whether Mr. B. and Ms. R. could maintain an adequate level of self-control and appropriate parenting would have to be carefully monitored and rigorously tested.

[41] Emphasizing the best interests of this young child and recognizing that time was of the essence, Dr. Woulff said it was important for him to find a permanent home as soon as possible - whether with his biological parents or elsewhere. She reported that should the parents regress to their earlier behaviours or should their child show a return to his earlier symptoms, then he should be removed from their home and care and plans for adoption should be pursued immediately.

[42] The trial judge emphasized Dr. Woulff's observations and recommendations in his decision. Each was critically aware of the awful changes observed in A.F. brought on by the chaos and conflict that typified living with his

mother. Justice Campbell clearly recognized the danger of this youngest child falling victim to the same tragic results as his older brother. He wrote:

> All of this must be seen in the context of the raising of the older child who for most of the subject child's life was the subject of a parallel CFSA proceeding resulting in his permanent agency care being ordered on May 11th, 2000.
>
> When the older child was the age of the subject-child, his adjustment and emotional health was described in very positive terms. In her evidence, Sharon Cruickshank, psychologist, later described the older boy as suffering from a detachment disorder, having been emotionally deprived and immersed in his mother's problems. . .
>
> It was clear from the evidence that the older child (not subject to the proceeding) had been severely damaged in an emotional sense. His behaviour was aggressive, anti-social and uncontrollable . . . his damaged emotional state . . . was significantly the product of the behaviours of his mother and her then partner (when they were together) and his mother and . . . (Mr. B.) in this case (while they were together).
>
> Part of the agency concern expressed through this process for the apprehension of the subject child relates to the risk of harm that would flow from a failure to correct behaviours of the past that so seriously affected the emotional health of the older child.

[43] The foregoing extracts explain the circumstances in which this child found himself and against which the court was required to assess his own best interests. Naturally, it was also in that context that the trial judge came to consider the offer made by the appellant's half-sister. A careful review of T. B.'s testimony, together with the evidence of S. R. and T. B., confirms that none of these people had given any serious thought to placing the child with her.

[44] It is to be remembered that by the time the permanent care hearing came before Justice Campbell in November, 2000, criminal charges had been laid against the parties following an incident at their apartment building with the property manager. They had been evicted. T. testified and expressed a willingness to take custody of the child in the event that the court saw fit not to place the child with his mother. Apart from two brief conversations

between T. B. and an agency social worker, the first a year earlier and the second in October, 2000, Ms. B.'s interest or involvement was neither clear nor convincing.

[45] In 1999, Ms. B. met with Mary Johnstone, an agency social worker, to discuss her taking temporary custody of the child at the time that he first went into foster care. Ms. B. signed documents confirming her consent to various background checks and gave Ms. Johnstone information concerning her history, living arrangements and employment status. She had a very small apartment which she shared with her own son, then a 15-year old grade 10 student. Ms. B. worked shift work as a *. There were days she was obliged to work as late as 9:30 in the evening. Whereas most day cares close at 5:30 p.m., she proposed that her young son could make arrangements to pick up the baby at the daycare facility.

[46] Dr. Woulff had grave concerns about T. B.'s ability to provide a proper home for this child, not only because of the lack of any "established, loving, close relationship already in place with the child", but her ability to enforce and place the needs and concerns of this child above all else.

> She would have to be able to clearly put the interests of [DWTB] above and beyond those that might present to her from her own brother or from the biological mother of this child.
>
> ...
>
> And we know that both of these individuals can present their needs in very vigorous and aggressive ways. And I would expect that this would be an ongoing issue in the life of the sister and the child.
>
> Now, if she was such an extraordinary person that she was able to set very, very firm limits on the kind of behaviour that the child was exposed to, and if she was able to absolutely and totally commit herself to the child's needs over and above those of the two adults in question, then I'd say she should be considered.
>
> But, quite frankly, I think that's asking a lot of a human being . . .

[47] When Ms. B. next met briefly for 15 minutes with Ms. Johnstone, a few weeks prior to the permanent care hearing in November, nothing had changed. No arrangements had been explored or made for larger accommodation, daycare, ensuring the child's safety in the hours before Ms. B. returned home from work, varying her shifts, etc. This was hardly the serious and concerted effort one might reasonably expect from a proponent of such an alternative family placement. A reading of Ms. B.'s evidence, together with submissions made at the time by her then counsel, leave the impression that they thought the burden lay with, or had passed to, the agency to establish such a viable family placement. I reject such a notion.

[48] The following exchange illustrates the point:

> MR. MCVEY I'd like to finish my submissions, My Lord. We're coming in blind. You gave a direction at the pretrial on October the 3rd that Mr. Pavey file his client's documents by the third week in October. It wasn't done. And I don't blame him. I understand the difficulties of his retainer. But we have no information about this plan. I'm preparing to cross-examine T. B. when she hits the stand. I was told on Saturday she's coming. No disclosure. I'd like to ask this witness some of the differences about what she wants to understand if we're talking about a custody placement or an adoptive placement. Because no lawyer is talking (sic) to me what we're talking about. So I'm trying to get it out from the witness.
>
> MS. FORBES My Lord, my objection would be I don't know what if (sic) my client knows that. Certainly it's not her plan she's putting forward as an active plan. I don't think she ought to be responsible for making that determination. I believe Mr. Pavey has follow-up comments.
>
> THE COURT Mr. Pavey?
>
> MR. PAVEY I find Mr. McVey's comments somewhat astonishing under the circumstances, My Lord. Certainly Ms. B.'s involvement has been before the Court for some considerable period of time. She's been raised both in respect of a temporary foster placement and as a permanent foster placement. The agency has known clearly, clearly of her potential involvement in this proceeding. The agency has, it will be submitted and I think the evidence will disclose, failed in its obligation to respond appropriately to that. There is an obligation on them to explore any possible extended family placement option. The obligation is not on

> Mr. B. to present that as part of his case. There is no obligation upon him to file some sort of application on behalf of Ms. B.. ...

[49] Mr. Pavey's submissions are wrong in law. There is no obligation, statutory or otherwise, upon an agency "to explore any possible extended family placement option". The agency's responsibility is no greater than the **Act** requires. In the circumstances of this case, it was not obliged to lend its resources to ascertain or improve the viability of T. B.'s offer. At best, her willingness to assist as expressed to the agency was no more than that, a simple offer to help. She had done nothing on her own to demonstrate to agency staff any serious commitment to provide a lasting and permanent home for this child. The agency was hardly compelled to arrange for legal counsel or such other expertise as would embellish or solidify her prospects.

[50] It is also clear from the record that early in the proceedings (then) counsel for the appellant was reminded by the court that there was an obligation upon Ms. B. to pursue the placement if she were intent on doing so.

[51] Ms. Johnstone concluded her brief meeting with Ms. B. by noting in her file:

> She will contact the agency when she feels she can present a plan for care of [DWTB].

The trial judge obviously accepted Ms. Johnstone's note of the meeting. In his decision he wrote:

> The mother's plan of care sought a return of the child to her unsupervised care and a dismissal of the proceedings or, in the alternative, placement of the child with the father's sister. The father's position was to support the position taken by the mother.
>
> The father's sister testified by indicating a willingness to take custody of the child in the event that the court saw fit not to place the child with his mother. However, this paternal aunt did not apply for party status, take part in the proceedings, put forward a written plan of care nor did she seek leave in order to make an application under the *Family Maintenance Act* for custody. The agency indicated,

> that in the event it should be granted permanent care of the child, it would entertain a request for adoption from the paternal aunt but resisted custody with that person at this stage of these proceedings.

[52] The agency has a statutory duty to take reasonable measures to provide services to families and children that promote the integrity of the family (s. 13 CFSA). The court has its own responsibility to take into account such measures and alternatives as are applicable in the circumstances of the case, before removing the child from the care of a parent or guardian (s. 42(2) CFSA). Thus the court and the agency share a responsibility to see that *reasonable* family or community options are considered. But the burden of establishing the merits of the alternative proposed are squarely upon the proponent. It is the proponent who must satisfy what I would term a burden of persuasion. Only when specific arrangements have been conceived and put in place by the proponent can the viability of that proposal be assessed.

[53] Quite apart from the statutory component, there are sound practical and policy reasons for fixing the proponent of a family placement with the burden of persuasion that I have described. The things that motivate alternative proposals for family placement in child custody matters may be as varied as the factors which prompted the family crisis in the first place. In many cases, a relative's offer to provide shelter, love and support to another parent's child will be driven by a genuine affection and willingness to help. But in other cases, offers of assistance may be prompted by harsh, yet subtle catalysts, including threats or other forms of coercion by those whose power or control over the proposed custodian may go well beyond the current judicial proceeding. This reality may be quite difficult to discern; all the more reason to expect that the individual who volunteers to serve as an alternative family placement, be obliged to demonstrate that the proposed plan is workable, well motivated and worthy of serious consideration.

[54] The agency is not required to investigate each and every family placement proposal. The burden of persuasion is upon those advocating a competing plan to advance the most compelling and sensible alternative they can muster.

[55] There is an obligation upon the person advocating a competing plan to present some cogent evidence with respect to it. In that way, the merits and viability of the proposal will have some foundation in fact which might then be adequately assessed by the trial judge. Should time permit and circumstances warrant, it may well be that the plan put forward as a

worthwhile family placement option will require further investigation, perhaps in some cases a complete home study report. However, not every possible placement alternative will require such a response.

[56] Critical to the trial judge's assessment of this infant's circumstances and best interests was his mother's eviction from her apartment four months earlier, followed by her separation from the appellant. He noted:

> ... I agree that the timing of the July event was critical. It is of fundamental importance that a child of this age be given a permanent home whether that should be with the parents or through adoption. Even if I accept the respondents' contention that the July incident was beyond their control, the fact is that they found their lives again in chaos with the mother having been evicted . . . and thereafter formulated intention to separate from the father after which she provided a separate plan for parenting without the stability of an established home life and before her many personal psychological issues could be resolved.

[57] It must also be remembered that the statutory deadline for dealing with this proceeding expired on December 15, 2000 and was extended by the trial judge for 30 days in order for him to hear submissions from counsel and reflect upon his decision. I do not accept appellant's counsel's argument before us that such extensions can be granted as a matter of course to permit (as here) the gathering of information garnered to sustain T. B.'s "plan" to assist. Such extensions should rarely be granted and then only in circumstances where protecting the best interests of the child demand it (see for example the decisions of this court in **Family and Children's Services of Kings Co. v. H.W. et al.** (1996), 155 N.S.R. (2d) 334; **Family and Children's Services of Kings Co. v. H.W.T.** (1996), 156 N.S.R. (2d) 237).

[58] Justice Campbell recognized this himself when he said that his extending the statutory deadline was a "rare, unusual and unsatisfactory event" prompted only by the urgent need for finding a permanent solution for this unfortunate child. On his own motion he granted a further temporary care and custody order upon terms, to January 15, 2000, so as to preserve jurisdiction and give himself a few weeks over the busy holiday season to carefully consider a great deal of evidence and expert testimony, together with the written submissions of counsel to be filed as directed. In reaching, as he put it, "the extremely unusual conclusion (to) ... extend time", it is

obvious from the record that he kept foremost in his mind his duty to this child's best interests.

[59] On the evidence before him, there was no obligation upon the trial judge to delay the proceedings so as to give further consideration to T. B.'s willingness to serve as the child's guardian. He wrote:

> I have considered the respondents' plan as an alternative that the child be placed with his paternal aunt. While I would not conclude that such a placement is necessarily unworkable, I must balance the fact that this suggestion came formally to the court at the trial itself and without the benefit for a review of a formal plan or a parental capacity assessment. To pursue this alternative without further study and reporting would be careless. . . to wait for that report would be to leave this child's fate at the peril of the passage of time at this critical stage in his development. The agency has expressed a willingness to entertain a request to adopt from the paternal aunt . . . any possible eventual placement with the paternal aunt is best left to that process. I do not want these remarks to be interpreted as indicating support for or opposition to such an adoption plan . . .
>
> ... If an adoption placement is ultimately available to the paternal aunt, that should occur only after the appropriate adoption review assessment has an opportunity to be made. Given the child protection issues raised by the father's involvement, it could not be said to be in the child's best interests to consider a paternal relative for placement at this stage of the proceedings and without the benefit of careful study. There are no other extended family or community plans for consideration by the court and therefore the requirements of s. 42(3) have been met.
>
> ...
>
> I direct therefore that the permanent care and custody of the child . . . be granted to the Children's Aid Society of Halifax. Because a child of this age should be given every opportunity to maximize the likelihood for adoption and given that access by the parents is a bar to the adoption process, I shall order that there shall be no access between the child and either of the parents except for the usual transitional visiting period.

[60] I agree entirely with Justice Campbell's treatment of the evidence and his conclusions in this regard.

[61] I would dismiss the appeal without costs.

Saunders, J.A.

Concurred in:

Roscoe, J.A.

Bateman, J.A.