NOVA SCOTIA COURT OF APPEAL

Citation: *K.F. v. Nova Scotia (Community Services)*, 2021 NSCA 81

Date: 20211215
Docket: CA 505891
Registry: Halifax

Between:

K. F.

Appellant

v.

Minister of Community Services and C. N.

Respondents

Restriction on Publication: s.941(1), The *Children and Family Services Act*

Judge:	The Honourable Justice Elizabeth Van den Eynden
Appeal Heard:	September 24, 2021, in Halifax, Nova Scotia
Subject:	*Children and Family Services Act* - permanent care and custody- timelines under s. 45 of the *CFSA* - best interests of the children.
Summary:	A Judge of the Supreme Court (Family Division) ordered that children K.N. and K.A. enter the permanent care and custody of the Minister of Community Services under the *Children and Family Services Act*. The parents had sought the return of children to their care. The appellant father appeals the permanent care order, claiming the judge made several errors.
Issues:	Did the trial judge err in ordering the children be placed in the permanent care and custody of the Minister?
Result:	Appeal dismissed, without costs. The trial judge correctly found that on this record, the proper order was an order for permanent care. There were serious and long-standing child protection concerns. While not precluding that in rare and unusual circumstances, timelines under s. 45 of the *CFSA* can

be extended, this was not a case where an extension would have resulted in meaningful or sustained reduction of risk to the children.

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Date: 20211215
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Appellant

v.

Minister of Community Services and C.N.

Respondents

Restriction on Publication: s.94(1), of the *Children and Family Services Act*

Judges:	Bryson, Van den Eynden, and Derrick, JJ.A.
Appeal Heard:	September 24, 2021, in Halifax, Nova Scotia
Held:	Appeal dismissed, without costs, per reasons for judgment of Van den Eynden, J.A.; Bryson and Derrick, JJ.A. concurring
Counsel:	Sarah Anne Perrone-Panneton for the appellant Sarah Lennerton, for the respondent, Minister of Community Services C.N., not participating

Prohibition on publication

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.

Reasons for judgment:

Overview

[1] The appellant father appeals the orders that placed his two children in the permanent care and custody of the respondent Minister. The respondent mother did not participate in the appeal.

[2] The record reveals serious and long-standing child protection concerns. Protection proceedings are not indefinite. The *Children and Family Services Act*, S.N.S. 1990, c. 5 (CFSA) sets out timelines for parents to adequately address protection concerns so they can safely parent their children.

[3] In this case, the parents were up against the statutory timelines. The judge placed the children in the Minister's permanent care because she found the protection concerns remained unresolved and were unlikely to change, less intrusive measures to permanent care were not viable, and there were no other placement alternatives.

[4] The appellant contends the judge: (i) could have extended the statutory timeline, allowing him more time to address the parenting risks; and (ii) erred in not doing so. The appellant asks this Court to set aside the orders for permanent care and substitute them with an order extending the protection proceedings in the court below for a further 4-month period.

[5] With respect, the appellant has not established any error was made by the judge. Permanent care was the only available order on this record. I would dismiss the appeal. My reasons follow.

Background

[6] Following a 4-day contested disposition hearing in November 2020, Justice C. LouAnn Chiasson of the Supreme Court of Nova Scotia (Family Division) issued the permanent care and custody orders under appeal (a separate order was issued for each child, then 7 and 9 years of age). Her reasons for doing so are set out in *Nova Scotia (Community Services) v. CN and KF*, 2021 NSSC 125. I will discuss her reasons in more detail later. For now I note the judge determined:

- The children were at substantial risk should they be returned to their parents' care. Findings of facts in relation to drug/alcohol use, domestic violence and inadequate parenting skills, underpinned this conclusion.

- The Minister provided appropriate services to the parents/family; however, the presenting risks remained and were unlikely to change within the prescribed timelines.

- There were no other placement alternatives to the Minister and less intrusive measures to permanent care were not viable.

[7] The judge was mindful that past parenting may be relevant to assessing future risk (para. 45 of her decision). The parents had an extensive protection history. The details were before the judge which she summarized as follows:

> [3] CN is the biological mother of Ka and Kn. She was involved with the agency from her childhood, having been taken into care herself at a very young age. Her mother passed away before the child protection proceeding was concluded and she was raised by a family member. The difficulties and trauma experienced by CN throughout her life are clear. Given her history, it is understandable that it was difficult for CN to trust and engage in the child protection proceeding at the outset.
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> [4] KF is the biological father of Ka and Kn. He is considerably older than CN. He has been involved with CN in a relationship off and on since CN was a teenager. KF has been involved with the Agency dating back to 2003, relating to his children from a previous relationship. Past allegations related to KF included domestic violence, and risk of emotional and physical harm to the children.
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> [5] The Agency became involved with CN and KF at the time of Ka's birth in 2012. Concerns at that time related to CN's ability to parent (without support) as well as allegations related to drug use. CN acknowledged drug use while pregnant with Ka prior to knowing she was pregnant. For the first five months of the pregnancy, CN consumed drugs (including dilaudid and marijuana) and drank alcohol.
>
> [6] Following Ka's birth, there were referrals from police related to domestic violence (which were subsequently denied by CN). KF also reported to the Agency that CN was using drugs and prostituting herself in 2013. Subsequently CN, KF and Ka left Nova Scotia for various periods of time (to BC and to Ontario). After the parents returned to Nova Scotia, KF signed a Memorandum of Understanding confirming that CN was only to have supervised parenting time with Ka given the various concerns.

> [7] In 2015 the Agency was again involved with CN and KF. There were allegations of CN's drug use and KF permitting CN to have unsupervised parenting time with Ka. During the time of the Agency's involvement, CN gave birth to Kn. There continued to be concerns about CN's drug use including her alleged drug use while still in hospital after giving birth to Kn.
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> [8] Despite the involvement of the Agency, there continued to be issues related to: the care of Ka and Kn, domestic violence, and drugs. Services were put in place to assist the parents, but the concerns escalated to the point where the children were taken into care in November 2015. The parents participated in services to the extent that the children were returned to their care in July 2016.
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> [9] In November, 2016, the proceeding was terminated. CN had addressed the concerns related to substance abuse, had engaged in Family Support Work and had attended couples counselling with KF. KF also participated in Family Support Work and couples counselling.
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> [10] Evidence shows that referrals continued to be received in relation to the family within months of the previous proceeding terminating. Referral sources included the IWK, the children's school and the parties' themselves. CN had been incarcerated for a period of time after the children were returned to the parents care in 2016.
>
> [11] Concerns from the school continued to be raised in relation to Ka including: her behaviour, developmental delays, hygiene, and marks on the child. Numerous services had been put in place for Ka from the school including a psychological assessment, school psychologist, guidance counsellor, education support worker and a behavioural specialist. The parents did not agree with the diagnosis of ADHD for Ka and would not agree to any medication. The IWK had previously raised issues related to Ka's aggression and hyperactivity, and attempted to connect the parents with appropriate services although they did not follow through.
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> [12] In the spring of 2019 Ka attended school with a bag of marijuana in her backpack. At the time she was 7 years of age. The parents did not know how Ka got the bag of marijuana but agreed to safely store the marijuana where the children would not have access. Despite the mounting concerns, the children remained in their parents' care.
>
> [13] Both parents acknowledged that there were behavioural issues particularly with Ka. CN indicated that Ka's behaviour was out of control- she was not sleeping at night and they had difficulty getting her to school. She would sometimes run from home or school to the point where the parties had to put a lock on the door so the children could not get outside on their own.

[8] The judge also set out the precipitating event that occurred on June 13, 2019. This event led to the children being taken into the Minister's care and to the commencement of the most recent protection proceedings. She explained:

> [14] The incident which brought the children into care in this proceeding occurred on June 13, 2019. On that occasion, the police contacted the Agency to advise that the children were seen at a playground without an adult. Kn had no shoes. A person saw them at the park and returned them to the home where there did not appear to be a care giver for the children. CN testified that she was not in the home that morning and that the children had a child care provider (KF's niece). She indicated that she did not know about the problem with the children unsupervised at the playground until she returned home. KF also testified that he was not home when the children left for the park.

[9] The appellant's children were taken into the Minister's care on June 14, 2019. The Minister filed the required Notice of Child Protection Application on June 19, 2019, and sought an order for temporary care and custody. The grounds asserted for the order included that the children were in need of protective services pursuant to s. 22(2), paras. (b) - risk of physical harm, (g) - risk of emotional harm, (k) - risk of neglect, under the CFSA. The Minister filed a supporting affidavit explaining why the children were taken into care, and why they were believed to be in need of protective services.

[10] The first court appearance was on June 21, 2019. Justice Chiasson was satisfied there were reasonable and probable grounds to believe the children were in need of protective services under s. 22(2) of the CFSA and granted the requested temporary care and custody order. The order also included provisions for parental access.

[11] The parties returned to court on July 11, 2019 to complete the interim protection hearing. The judge had the benefit of an updated affidavit filed by the Minister and determined the children remained in need of protection. She granted an order continuing temporary care and custody, as well as access. The order also directed the parents be referred to counselling and parenting skills instruction. The respondent mother was ordered to participate in random urinalysis screening.

[12] The Protection Hearing was held on September 13, 2019. Prior to this hearing the parents reported a breakdown in their relationship. The respondent mother reported the appellant had been abusive towards her and they separated. The Minister filed an affidavit in advance of the hearing to update the judge on the circumstances of the parents and children.

[13] At the Protection Hearing the judge determined the children were in need of protection services pursuant to s. 22(2)(g) of the CFSA. However, the Minister

reserved its right to lead evidence at a future date with respect to further grounds under s. 22(2) of the CFSA.

[14] The next stage of the proceedings is often referred to as the disposition phase. Section 45(2) of the CFSA sets out the maximum duration for disposition orders. In this case, the maximum period was 12 months. The section provides:

> **Duration of orders**
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> 45
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> …
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> (2) Where the court has made an order for temporary care and custody, the total period of disposition orders, including any supervision orders, shall not exceed
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> (a) where the child was under fourteen years of age at the
>
> time of the application commencing the proceedings, twelve months;

[15] The initial Disposition Hearing was held on November 28, 2019, and thus the statutory end date for these protection proceedings was November 28, 2020.

[16] The Minister filed the required Plan for the Children's Care (Plan of Care) on October 28, 2019, in advance of the Initial Disposition Hearing. By this time, the parents had reportedly reconciled.

[17] The detailed Plan of Care set out the history of the Minister's involvement with the family; the presenting concerns/risks; the services offered to the children and their parents; and, explained why the Minister maintained that continued temporary care was in the children's best interests. The Plan of Care confirmed family reunification remained the goal; however, it also made clear the parents needed to address the presenting protection concerns for this goal to materialize.

[18] As noted, the initial Disposition Hearing was held on November 28, 2019. Further reviews were held on February 18, May 5, and July 15, 2020. In addition to the Plan of Care, prior to each hearing the Minister filed an updated affidavit setting out the family's circumstances. It is evident from the record that the protection concerns were not resolving. At each of these review hearings Justice Chiasson ordered the children to remain in temporary care and custody, and the parents to continue with services. The review disposition orders also required the appellant to undergo random urinalysis screening.

[19] Due to the lack of progress in addressing the protection concerns, the Minister's Plan of Care for the children changed. In an updated Plan of Care dated September 9, 2020 (filed with the court together with a Notice of Motion for Review of Disposition on September 10, 2020), the Minister requested the court place the children in the permanent care and custody of the Minister.

[20] The updated Plan of Care noted neither parent had fully participated in random urinalysis, both parents tested positive for cocaine and the respondent mother also tested positive for opiates. The Minister maintained the appellant lacked insight into the children's high needs and behavioural issues. He required prompting and redirection from case aides during access visits to help him manage the children. The parents had not yet moved beyond supervised visits, despite the clock winding down on the twelve month window toward a final decision on the matter.

[21] The Plan of Care also remarked on the long standing history of parenting deficits and the parents' inability to sustain any long term change. In particular, the Minister noted that inadequate parenting skills, substance abuse, inadequate supervision and domestic violence all remained as presenting risks to the children. The Minister detailed all the services made available to the family to assist them in remediating these risks and concluded that notwithstanding the services provided, the risks were unlikely to change. The Plan of Care indicated that although a family placement had been considered, it did not materialize as the family member was unable to care for the children. No other family placement was identified.

[22] At the October 5, 2020 Disposition Review Hearing, trial dates were assigned and the order for temporary care and custody was continued pending determination of the Minister's motion for permanent care and custody.

[23] The trial proceeded on November 16, 17, 18, and 19, 2020. Both parents were represented by counsel. The Minister called five witnesses to provide testimony—the parents' counselor, three social workers and a family support worker. All had worked with the family during the protection proceedings. The parents testified. They did not call any additional witnesses.

[24] In addition to the *viva voce* evidence at trial, the documentary record before the judge was extensive. Numerous exhibits were filed, including a Book of Pleadings, Book of Case Recordings, Book of Reports, Book of Toxicology Reports/Notes, and evidence from the previous protection proceeding admitted pursuant to s. 96 of the CFSA.

[25] The record confirms the parents were provided with numerous services to assist them in addressing the risks to their children. Services included individual and couples' counseling, family support services to help the parents understand childhood development, behaviour management, structure and routine. Substance abuse assessment, screening and support services were also made available. For a few months during the protection proceedings, services could not be delivered in person due to the COVID-19 pandemic. The appellant explains in his factum:

> 3. In March 2020, the services being accessed by (the appellant) and the children were moved to a virtual setting in light of the COVID-19 emergency. Additionally, (the appellant's) access visits with the children, which were ordered pursuant to Section 44(1)(a) of the CFSA, were shifted to a virtual setting as well. From March 2020 until late July 2020, (the appellant) did not have in-person contact with his children and was not able to receive in-person services and resources. …

[26] The judge was satisfied the Minister fulfilled the duty to provide services to promote the integrity of the family. She reviewed the services provided as well as the parents' compliance and progress. The record confirms ongoing issues with substance abuse, domestic violence, lack of candour with services providers, lack of appreciation of the children's needs and lack of follow through with recommendations relating to the children's care. Despite the lengthy provision of services, the judge determined the circumstances were unlikely to change—meaning that if returned to the care of their parents, the children would remain at substantial risk.

[27] I note the appellant's primary complaint on appeal is that Justice Chiasson did not extend the statutory timelines under the CFSA to compensate for the change in the mode of service delivery. However, the appellant did not raise this concern nor ask for such a remedy in the court below. I will address whether the judge had any authority to extend the statutory timelines in my analysis.

[28] During the protection proceedings the children also received services, including counselling and medical assessments. The record contains detailed reports from their service providers, including neuropsychological assessment reports. The doctor who assessed the children's neuropsychological health in April 2020 opined that both children presented with a neurodevelopmental disorder associated with prenatal drug and/or alcohol exposure, as well as attention deficit/hyperactivity disorder—the latter also often associated with prenatal exposure to alcohol and/or drugs.

[29] It is clear from the record the judge determined the children have high needs, and require a home environment with structure, consistency and routine, coupled with a very high level of parental support and supervision.

[30] As noted, the judge concluded that if returned to the care of their parents the children were at substantial risk of harm primarily due to parental drug/alcohol use, domestic violence and inadequate parenting skills.

[31] I will supplement additional background in my analysis of the grounds of appeal as needed.

Issues

[32] In his Notice of Appeal the appellant contends:

> 1. The judge failed to consider returning the children to him; and
>
> 2. The judge's decision was unreasonable as it did not address the positive evidence favouring him.

[33] Without first seeking to amend his Notice of Appeal, the appellant set out and argues new grounds of appeal in his factum. The Minister responded to the new grounds, recognizing our discretionary authority to consider them (*Civil Procedure Rule* 90.11(1)). Prior to the appeal hearing, the appellant filed a motion to amend his Notice of Appeal to reflect the grounds now advanced. The Minister did not oppose. I would grant the motion to amend.

[34] The amended grounds of appeal are:

> 1. Did the judge err in concluding that only two options were available to the court at the conclusion of the legislated time frame?
>
> 2. Is it in the children's best interests to extend the legislated time frame?

[35] The grounds overlap and can be best addressed by asking: did the judge err in ordering the children be placed in the permanent care and custody of the Minister?

Standard of review

[36] The standard of review of a judge's decision in a child protection matter is clear. This Court may only intervene if the judge: (1) erred in law which is reviewed on a correctness standard; or (2) made a palpable and overriding error, meaning an error that is both clear and material to issues of either fact or mixed fact and law with no extractable legal error (see *H.A.N. v. Nova Scotia (Community Services)*, 2013 NSCA 44, at para. 32).

Analysis

Did the judge err in ordering the children be placed in the permanent care and custody of the Minister?

[37] The appellant contends the judge had the authority to extend the statutory timelines set out in s. 45 of the CFSA to allow him more time to participate in services and to address the outstanding protection concerns. He claims an extension was in the best interests of his children and the judge erred by not granting one. Notably, he did not ask the judge to extend the timeline, nevertheless, he now faults her for not doing so. He claims she should have done so on her own initiative as the best interests of the children was her paramount consideration. In other words, he submits the judge failed to consider alternative options to dismissal or permanent care which may have better suited the children's best interests.

[38] I am satisfied Justice Chiasson did not err. Placing the children in the Minister's permanent care and custody was, based on this record, clearly in their best interests. Further, her decision accords with the governing statutory framework under the CFSA and the jurisprudence of this Court.

[39] As noted, the CFSA limits the duration of disposition orders. In this case, given the age of the children, by operation of s. 45(2) the maximum period was 12 months, which resulted in a statutory end date of November 28, 2020. For convenience, I repeat the provision:

> **Duration of orders**
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> 45
>
> …
>
> (2) Where the court has made an order for temporary care and custody, **the total period of disposition orders**, including any supervision orders, **shall not exceed**
>
> > (a) where the child was under fourteen years of age at the time of the application commencing the proceedings, **twelve months**;

[emphasis added]

[40] At the conclusion of the disposition hearing, s. 42(1) required the judge to make one of the enumerated orders. For the purpose of this appeal, because of the statutory timelines, the available orders were:

> **Disposition order**
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> 42 (1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:
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> (a) dismiss the matter;
>
> …
>
> (f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

[41] Section 42(4) restricts a judge from making an order for permanent care and custody unless 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".

[42] Unlike other jurisdictions[1], the CFSA does not provide any express extension provisions; however, this Court has determined that, in rare circumstances, the prescribed timelines may be extended. Cases in which extensions were found to be warranted focused on situations where additional time was needed to complete the final disposition hearing or for a judge to adjudicate (decide) the matter as opposed to extensions to permit additional time to remedy ongoing risks to the children.

[43] It is well recognized that children have a different sense of time than adults and CFSA proceedings and the attendant statutory timelines, are responsive to a

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[1] *Child Youth and Family Enhancement Act,* R.S.A. 2000, c. C-12 at s. 33(3); *Child, Family and Community Service Act*, R.S.B.C. 1996, c. 46 at s. 45(1.1); *The Child and Family Services Act,* C.C.S.M. c. C80 at s. 41(2); *Children, Youth and Families A*ct, S.N.L. 2018, c. C-12.3 at s. 33(2); *Child, Youth and Family Services Act* 2017, S.O. 2017, c. 14 at s. 122(5); *Child Protection Act*, R.S.P.E.I. 2000, c. 3 at s. 41(3); *The Child and Family Services Act*, SS 1989-90, c. C-7.2 at s. 38(10); *Child and Family Services Act,* S.Y. 2008, c. 1 at s. 61(4); *Youth Protection Act*, CQLR c P-34.1 at s. 91.1.

child's needs and sense of time. As this Court said in *L.L.P. v. Nova Scotia (Community Services)*, 2003 NSCA 1[2]:

> [24] The maximum statutory time limits for a proceeding are set out in section 45 of the Act: … At the end of these periods a court must either dismiss the proceeding or order permanent care and custody. The time frames within which the proceeding must be resolved are necessarily short in deference to the "child's sense of time", as is recognized in the recitals to the Act:
>
> > AND WHEREAS children have a sense of time that is different from that of adults and services provided pursuant to this Act and proceedings taken pursuant to it must respect the child's sense of time;

[44] Further in *T.B. v. Children's Aid Society of Halifax*, 2001 NSCA 99, this Court made clear that time extensions are only appropriate in rare circumstances and then only where the best interests of a child so demand:

> 24 …As the proceeding nears a conclusion, the opportunity to grant disposition orders …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).
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> …
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> 26 ... 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. …
>
> …
>
> 56 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.

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[2] Section 45 of the CFSA was amended in 2015 (the changes were proclaimed in 2017) in *An Act to Amend Chapter 5 of the Acts of 1990, the Children and Family Services Act*, 2015 c. 37. Although the statutory timelines were amended; the principles stated *in LLP v. Nova Scotia (Community Services)* and the following noted decisions of this Court continue to apply.

> 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.

[45] In paragraph 57 of *T.B.* v. *Children's Aid Society of Halifax* this Court endorsed the premise that extending the statutory timeline was a "rare, unusual and unsatisfactory event".

[46] This Court's decisions in *H.W. v. Children's Aid Society & Family Services of Colchester (County),* 1996 NSCA 239, at para. 34; *Minister of Community Services v. B.F*., 2003 NSCA 119, at para. 66, leave to S.C.C. denied [2003] S.C.C.A. 532; *A.M. v. Children's Aid Society of Cape Breton-Victoria*, 2005 NSCA 58, at para 32; *N.J.H. v. Nova Scotia (Community Services)*, 2006 NSCA 20, at para. 20, are to similar effect.

[47] The foregoing authorities establish the general principle that the statutory timelines in s. 45 of the CFSA are to be given their literal meaning. That recognized, there may be rare and unusual circumstances where the best interests of a child demand an extension.

[48] Although extensions have been granted to allow for the completion of a disposition hearing outside of the statutory timelines, that occurrence should be the exception and not the norm.

[49] An extension of the prescribed timelines to permit the delivery of services or to permit a parent or guardian more time to try to address the protection risks is not expressly contemplated by the CFSA. That said, I would not foreclose the possibility of a rare and unusual circumstance which might warrant such an extension of time. However, this is not such a case because, as explained below, the best interests of the children do not demand it.

[50] I return to the appellant's contention that because of the COVID-19 pandemic he should have been granted an extension of time to pursue more services and address the protection concerns. He claims the shift in the mode of several services from in-person to virtual limited his ability to best address the protection concerns for a period of 4 months. As noted, he did not specifically raise this complaint in the court below, nor ask the judge to extend the timelines. However, he asks we now recognize this as an impediment beyond his control and afford him more time.

[51] The Minister contends the judge correctly determined there were only two options available to her at the end of the legislated timeline (dismissal of the proceedings or an order for permanent care). Alternatively, if it was open to the judge to extend the legislated timeline (something not conceded to by the Minister), it was not in the children's best interests to provide an extension.

[52] With respect, the appellant's arguments are not persuasive. It is evident from the record that the underlying protection concerns were serious and long standing. The appellant had the benefit of extensive services, over a long period of time, to address the presenting protection concerns. On the evidence before her, the judge's decision was in keeping with the best interests of these children.

[53] As noted, the judge turned her mind to the services provided. She said:

> [40] The Agency has the duty to provide services to the families to promote the integrity of the family. The Agency has fulfilled their duty in providing services to (the parents). Services have been provided to this family throughout the two child protection proceedings.
>
> [41] As noted by our Court of Appeal in *Nova Scotia (Minister of Community Services v. L.L.P.* [2003] N.S.J. No. 1 at para 25:
>
> > "The goal of "services" is not to address the parents' deficiencies in isolation, but to serve the children's needs by equipping the parents to fulfill their role in order that the family remain intact. Any service-based measure intended to preserve or reunite the family unit, must be one which can effect acceptable change within the limited time permitted by the Act. ... Ultimately, parents must assume responsibility for parenting their children. The Act does not contemplate that the Agency shore up the family indefinitely..."
>
> [42] The parents were provided with services over a significant period of time over the course of two proceedings. As noted, there were times when the parents did not agree that the services were necessary and their compliance was not consistent. In particular, KF argued that the family was not receiving enough support and services but did not fully engage in the Family Support Work. He missed urinalysis. He did not believe the children's needs were as significant as noted by third party care providers.
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> …
>
> [51] … Although services have been provided to the parents to address the concerns, the concerns remain. …

[54] Although there was some interruption in the mode of service delivery due to the COVID-19 pandemic, the appellant has not established this temporal change

had any material impact. On a review of this record, I am satisfied any extension would not have resulted in any meaningful nor sustained reduction of risk to the children.

[55] The Minister's submissions fairly capture this unfortunate reality:

> 85. The Minister submits that it is not reasonably foreseeable that there will be change sufficient to mitigate the protection concerns, for the following reasons:
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> a. This was the second CFSA proceeding regarding this family. Services were offered throughout both proceedings, without sustained change.
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> b. Agency involvement took place over a period of eight years.
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> c. The children have high needs that are not acknowledged by the parents.
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> d. The parents did not consistently participate in services.
>
> e. The parents were unable to manage the children's behaviours during access.
>
> f. Goals of Family Support were not met, and some topics had not yet been covered.
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> 86. Given the long history of Agency involvement, the lack of sustained change, and the inconsistency in participation in services, the Minister submits that adequate change is unlikely to occur within four months, or any reasonable length of time.

[56] I return to the judge's decision. She found:

> [46] Section 22(2)(b) of the CFSA deals with substantial risk of physical harm; (g) deals with substantial risk of emotional abuse, and (k) deals with substantial risk of neglect. I find that there is a substantial risk to Ka and Kn should they be returned to their parents' care. I make this finding based on the finding of facts made in relation to drug/ alcohol use, domestic violence and inadequate parenting skills as noted above.

[57] The protection finding is well anchored in the record, as is the judge's determination the circumstances giving rise to the protection concerns were unlikely to change within the maximum time limits set out s. 45. The proper result that followed was an order for permanent care. She reasoned:

> [47] Prior to ordering permanent care, I must consider s. 42 (2), (3) and (4) of the CFSA. The factors to be considered by the court are:
>
> - Have less intrusive measures been attempted, and have failed, or been refused by the parents, or would be inadequate to protect the children?

- Is there a potential placement with a relative, neighbour, or member of the child's community?

- Are the circumstances likely to change within the time frame prescribed?

[48] Less intrusive measures to permanent care are not viable.

[49] There is no other potential placement. At the time the children were taken into care they were placed with a family member. That placement broke down and the children came into the care of the Minister shortly thereafter. There were no other placement alternatives to the agency.

[50] The circumstances are not likely to change within the time frame prescribed.

[51] There have been eight years of referrals to the Department of Community Services. These children have been taken into care three times over the course of two separate child protection proceedings. Although services have been provided to the parents to address the concerns, the concerns remain. Ka and Kn shall be placed in the permanent care of the Minister of Community Services.

Conclusion

[58] Justice Chiasson was mindful of the statutory and legal principles that must govern her determination of the children's best interests. As noted, even if she had been asked to extend the timelines due to the change in service delivery as a result of the pandemic, any extension would not have been in the best interests of these children. The only way to adequately protect them from risk of harm was by placing them in the permanent care and custody of the Minister—as the judge did.

[59] There is no basis for our intervention. I would dismiss the appeal. No costs were sought by the Minister. None are ordered.

Van den Eynden, J.A.

Concurred in:

Bryson, J.A.

Derrick, J.A.