FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v. DAB , 2015 NSFC 8

Date: 2015-05-26
Docket: FKCFSA-085219
Registry: Kentville, N.S.

Between:

MINISTER OF COMMUNITY SERVICES

Applicant

-and -

DAB and BAH

Respondents

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

Judge: The Honourable Judge Marci Lin Melvin

Heard: February 24th & 26th, 2015 & March 4th and 30th, 2015,
New evidence: April 28th, 2015, in Kentville, Nova Scotia

Submissions: Counsel for DAB: May 7, 2015
Counsel for BAH: May 7, 2015
Counsel for the Minister: May 19, 2015

Counsel: Elizabeth Whelton,Q.C. for the Applicant
David Baker, for the Respondent, DAB
Nicole Mahoney, for the Respondent BAH

By the Court:

INTRODUCTION

[1] M.B. is the child of the Respondents and was born November […], 2011. The child has been the subject of proceedings, under the ***Children and Family Services Act*** for his entire life, with the exception of three (3) days after his birth, while still in the hospital, and the seven (7) days between the termination of the first proceeding on February 27, 2013, and his being taken into the care on March 7, 2013 commencing this proceeding.

[2] The timelines have been stretched to the breaking point, for various reasons, most recently on a motion of this Court for parental capacity assessments to be prepared in the best interests of the child.

[3] The Minister of Community Services has made application for the child to be placed in the permanent care and custody of the Minister of Community Services. DAB's plan was to raise the child with her partner, J.H. BAH's plan was to raise the child with his new fiancé, C.K.

FACTS

[4] When the child was born, DAB had been living with her parents. The Applicant did not support DAB taking a newborn to her parent's home.

[5] The child's father, BAH, was not a named party and although he made application to be joined, did not follow through. DAB 's evidence against BAH was troubling.

[6] DAB attended services and the child, M.B. was returned to DAB's care and the matter was terminated on February 27, 2013.

[7] On March 7, 2013 - as a result of the Applicant learning DAB's boyfriend, J.H., was trafficking in narcotics, using drugs, and a party had been hosted by DAB the night before - an agent for the Applicant attended the home, where both Respondents, the child, as well as J.H. were present. DAB was aware of the Applicant's concerns regarding BAH and J.H. being in the presence of the child. The allegations of drug use, the drug paraphernalia found in her yard, that she admitted to using alcohol while in a caregiver role, that she expressed fear regarding other individuals in her home, that the home was cluttered and not appropriate as a home for a child, resulted in M.B. being taken into care once again.

[8] DAB claimed J.H. was a part of her plan. Further services were put in place for DAB as well as J.H. These included the services of the Positive Relationship program at a Psychological service provider, a Family Support Worker to assist DAB and J.H. in maintaining a home, and

individual counseling to assist DAB with decision making. J.H. was going to seek out assistance through the Opiate Treatment Replacement Program.

[9] Two months subsequent to M.B. coming into care, BAH contacted the Applicant for parenting time.

[10] In May 2013, a drug raid was conducted on DAB's home, and drugs were found. Although both DAB and J.H. were charged, J.H. eventually took responsibility and charges against DAB were dropped.

[11] By the summer of 2013, DAB was pregnant with J.H.'s child.

[12] M.B. was found in need of protective services on June 3, 2013.

[13] In March 2014, as DAB maintained she had no ongoing relationship with J.H. and was complying with conditions, the Applicant once again decided to return the child to DAB's care by April 2, 2014.

[14] There were conditions: DAB continue to work with the services being provided to her, abstain from the use of any illegal substance, and disallow drugs or paraphernalia in her home. J.H. was to have no contact with the child, M.B., and not attend at her residence at any time.

[15] DAB gave birth to J.H.'s child on May […], 2014. Due to accommodation difficulties DAB and children moved to the local transition house.

[16] On July 7, 2014, DAB was observed downtown with her newborn and child, M.B. The father of the newborn, J.H., was also present on a bicycle. J.H. was observed peddling the bike with the five-week-old baby clutched under his arm.

[17] Both children came into care of the Applicant on July 8th, 2014.

[18] This was the third time M.B. - who was at this point 2 years and seven months old - had come into care.

[19] Approximately two weeks after the hearing concluded, based on an agreed statement of facts, the Court was informed that DAB's boyfriend, J.H., was charged with robbing a local pharmacy and shortly thereafter sentenced to 5.5 years in prison. DAB was to be charged as a party to the robbery and was residing with her godparents in HRM.

EVIDENCE

[20] The Court heard *viva voce* evidence on February 24, 26, and March 4 and 30, 2015. The Applicant had filed affidavits and reports and counsel for the Respondents advised the Court and Applicant counsel which of the deponents of the reports and affidavits would be required for

cross-examination. The court had ordered parental capacity assessments, which were done by Kevin Graham - who was subject as an expert witness - to examination by all counsel.

[21] Mr. Graham's opinion was that the child, M.B., should not be placed in the care of either DAB or BAH. He further testified the child, M.B., had significant issues, had been damaged by the process he's been exposed to and needs stable, secure and consistent structure.

WITNESSES FOR THE APPLICANT

[22] There were five different social workers involved with the Respondents since taking this child into care, two of whom were not required by the Respondents for cross-examination**.** Nine of the Applicant's witnesses were subject to cross-examination.

[23] As Shannon MacLeod's evidence is what precipitated this latest coming into care, it should be noted that during her testimony Ms. MacLeod was forthright and credible. She testified the baby was in J.H.'s arms, he was on his bicycle, his feet were off the ground, and he was riding the bike. Ms. MacLeod testified she said to J.H.: "You nearly gave me a heart attack when I realized you were holding a baby," and DAB who caught up to them at that point said she was in agreement with that. In cross-examination by counsel for DAB, this was confirmed and it was clear DAB was not able to prevent J.H. from taking her newborn on a bike with him.

[24] The Court does not intend to go through the evidence of all witnesses suffice to say that much of it was sympathetic to one or both of the Respondents. Psychologist Deborah Pick was particularly impressive with the work she had done with BAH, even offering him ***pro bono*** services to help him with trauma therapy if the agency did not provide funding for it.

[25] Ms. Pick testified BAH used marijuana for anxiety, and she believed he might benefit from medical marijuana for both his anxiety and chronic pain. She thought his reported symptoms might relate to post traumatic stress disorder. His symptoms included "…pretty extreme anxiety, anger, sadness, feeling useless, feeling hopeless, feeling like he's not a good person…" She testified there were many incidents in his past that might bring on a post-traumatic stress disorder, including physical and emotional abuse by his mother, by his step-parent, witnessing family violence, witnessing DAB – his girlfriend at the time – being raped when he was intoxicated and couldn't help her. She testified: "He's particularly sensitive to criticism … and becomes very upset and feels … useless when he perceives he's being criticized and then reacts very strongly … going away and crying … punching a hole in the wall … yelling at people." Ms. Pick had hoped to work with BAH using trauma therapy to address his post-traumatic stress, and consistency was important. Although BAH saw her sixteen times he was inconsistent and it meant they were not able to do trauma therapy. She testified BAH was not able to make the appointment and nothing was rescheduled.

[26] She testified the issues of domestic violence, anger and anxiety would not "…resolve themselves without further intervention."

[27] The Court has considered all of the Applicant's evidence, both filed and not subject to cross-examination, and viva voce and has afforded it the appropriate weight.

WITNESSES FOR THE RESPONDENT, BAH

[28] C.K. testified on behalf of BAH and is his fiancé. They became engaged within the time frame of the parental capacity assessment. Although they have been together a number of years, their relationship had undergone a number of break-ups, on at least one occasion due to mutual infidelity. On another occasion while they were still dating she spent six weeks in the local transition house. She testified they had relationship "blowouts" once every three months. There was evidence of BAH tearfully saying he wasn't sure he had a place "to go home to."

[29] She testified BAH self-medicates with marijuana in the early mornings, sometimes during the day, and in the evenings. Further, BAH took the child to a place that sold drug paraphernalia, but it also sold toys and other things, so she didn't have a problem with it.

[30] She further testified that although BAH is charged with break and enter, it was into his brother's house and his "… brother is kind of dramatic."

[31] There was a child protection file opened with respect to C.K. and the children, as a result of BAH's involvement with them, and she "… is not supposed to leave the kids alone with [BAH]." Her testimony was she has never left BAH alone with the children.

[32] They have a one-year-old child together, and CK has a three-year-old child. Both children reside with them. The eldest child is approximately six months older than the child subject to these proceedings, M.B. Further, C.K.'s mother lived with them, and all were in receipt of social assistance.

[33] BAH testified. He presented as a gentle, shy individual. The Court noted he was pleasant, respectful and composed. He testified he took prescription drugs for various ailments . He and DAB had an abusive and troubling relationship. He wasn't aware of M.B.'s birth, wasn't initially involved in M.B.'s life, and was a minimal participant in the first proceeding.

[34] BAH's life has been sad and tragic. His childhood was horrendous, he's been homeless, he's been involved in the criminal justice system, his testimony confirmed his past was filled with violence, anger and abuse, he recognizes he's been inconsistent in his parenting of M.B., he's struggled with many issues, and yet, it's evident to the Court that he keeps trying to be the good person he knows he is capable of being.

WITNESSES FOR THE RESPONDENT, DAB

[35] J.H. testified for DAB. When cross-examined if he knew being around M.B. would jeopardize the child remaining with DAB he merely replied: "Yup." His testimony with respect to the bicycle incident was that DAB passed him the child, and he was only straddling the bicycle not riding it. He became belligerent when cross-examined about his marijuana use. As the cross-examination progressed he became increasingly hostile.

[36] DAB testified. She presented as a gentle, soft-spoken person; a sad victim of circumstance. She testified there were times she hadn't felt safe with J.H., when she asked him

certain questions that he didn't want to answer. She testified that when J.H. was in an angry mood, she knew she had to remove herself from the situation until he had calmed down.

[37] When cross-examined by Ms. Whelton concerning the second time M.B. was returned to her care, DAB was asked if she knew that by J.H. or BAH being in her home with the children, she risked losing the children. DAB testified: "I wasn't expecting the police and Jeff Bickle [an agent for the Applicant] to show up at my door." She was arrested for possession of hydromorphine, which she said belonged to J.H. She testified that now J.H. can't use it because she checked his body every day for marks.

[38] Her evidence with respect to her continued involvement with J.H. has changed over the time M.B. has been in care. Sometimes her evidence was that they had no contact, most recently, they were only apart for a few short months.

[39] She testified she did not want to live with her godparents because she did not want to be that far from J.H. She further testified that she moved away because she and her godmother got into a disagreement.

NEW EVIDENCE

[40] Subsequent to the hearing and while the Court awaited written submissions from the parties, counsel for the Applicant and the Respondent, DAB, attended court with consent to admit new evidence. The Court considered this problematic in that the process did not lend itself to the regular procedural rigors however counsel effectively argued this new evidence was an agreed statement of facts, being filed on a "consent" basis. The Court has jurisdiction pursuant to **Civil Procedure Rue 82.22 (2)** which allows a party to make a motion for permission to present further evidence before a final order and after, for these purposes, closing the party's case at trial.

[41] The new evidence was as follows:

1. J.H. was convicted and sentenced to a term of imprisonment of 5.5 years for a number of offences, including a robbery which took place on April 11, 2015 at a local pharmacy, as well as possession for the purpose of trafficking.
2. Police advised that DAB will be charged with robbery-related offence(s) – as a party to the offence, and has a first appearance in Provincial Court in June 2015.
3. That DAB was not physically present at the robbery by J.H.
4. That DAB is residing with her godparents in HRM.

[42] The crime took place less than two weeks after DAB and J.H. testified in this matter that their plan was to raise this child together.

LEGISLATION – THE CHILDREN AND FAMILY SERVICES ACT, R.S.N.S., CHAPTER 5

[43] In reaching a decision regarding the future care of the child, as argued by the Applicant, the Court is to be guided by what is in the child's best interests. The purpose of the **Children and Family Services Act, s. 2,** is to protect children from harm, promote the integrity of the family, and at all times ensure the child's best interests are paramount.

[44] There are factors – which must be relevant to the particular case - to be considered pursuant to **section 3** of **the Act,** when making a determination in the best interests of a child.

[45] For this particular matter, the Court has considered: the importance of the child developing a positive relationship with a parent and having a secure place as a family member, the child's relationship with relatives, continuity of the child's care, the effect of the disruption of that continuity, the child's physical, mental and emotional needs, the merits of the agency plan versus that of the parents, the risk a child may suffer by either being removed from or returned to the care of a parent, the degree of risk that justified the finding that the child is in need of protective services, and other circumstances the court considered relevant.

[46] At the conclusion of a disposition hearing, pursuant to **s. 42 (1)** of **the Act**, the Court must make an order in the child's best interests. As noted earlier, the timelines in this matter are stretched and the Court has only two available options: to dismiss the matter or the make an order for permanent care to the Applicant.

[47] The Act sets out, pursuant to **section 42 (2)**, that a Court shall not order the child removed from the parent unless satisfied that less intrusive alternatives have been attempted and failed, have been refused by the parent, or would be inadequate to protect the child.

[48] **Section 42 (3)** states where the court determines it necessary to remove the child from the care of a parent, the court shall, before making an order for permanent care consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family, with the consent of the relative or other person. Although the only option available to the Court is as noted above, to dismiss or return the child the a parent, the Court has given some consideration to this particular section, but finds in light of the evidence, even if this provision were available to the Court, this would not be in the child's best interests.

[49] The Act also sets out the criteria upon review pursuant to **section 46**. A party may apply for review of an order for temporary care and custody, but the agency shall apply to the court for review prior to the expiry of the order. Before making an order, the court need consider, in the circumstances of this particular case, whether the circumstances have changed since the previous disposition order was made, whether the plan for the child's care that the court applied in its decision is being carried out, and what is the least intrusive alternative that is in the child's best interests.

JURISPRUDENCE

[50] Minister of Community Services v. C.M. and G.M. 2011 NSSC 112, at paragraph 72:

> **"…Permanent Care Orders should only be granted in cases where there is clear, convincing, and cogent evidence supporting the conclusion that all reasonable measures, including placement within the extended family have been exhausted."**

[51] In addition, the court must determine that the services provided in the course of this proceeding have been tried and failed, or have been refused by a parent. Ultimately, the court must decide, at the time of making a disposition order, whether the children are in need of protection under one of the enumerated grounds of **section 22(2) of the Act.**

[52] Children's Aid Society of Pictou County v. A.J.G. [2009] N.S.J 363, Wilson, J.F.C.:

> **"In making such a determination, the court must always keep in mind that the 'standard' is 'good enough parenting' and 'manageable risk'."**

[53] The Court must be satisfied on a balance of probabilities that DAB or BAH is capable of employing good enough parenting and capable of managing any potential risks, in order to return the child to her or his care.

[54] Minister of Community Services v. C.M., 2001 NSSC 112: The Court held that the Respondents had successfully completed sufficient remedial services to satisfy the court that they have gained insight into the domestic issues, substantially eliminating or reducing the risk. The court confirmed that the evidence showed that the Respondent had changed for the better and that this change is substantive, sufficient, and real enough for the court to be satisfied that the children were no longer in need of protective services at that time and can be safely returned home.

[55] It must be determined on a balance of probabilities if the Applicant has made out a case for permanent care of the child, M.B. taking into account substantial risk, and whether it has been reduced or eliminated through remedial services. Have the Respondents gained insight and is the parenting that can be provided by the Respondents "good enough" parenting, all under the umbrella of what is in the best interests of these children.

[56] F.H. v. McDougall, 2008 SCC 53, at paragraph 49:

> **"… [I]n civil cases there is only one standard of proof and that is proof on a balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred..."**

[57] **Nova Scotia (Minister of Community Services) v. L.L.P., [2003] N.S.J. No. 1 (C.A.), paragraph 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 fulfil 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. If a stable and safe level of parental functioning has not been achieved by the time of final disposition, before returning the children to the parents, the court should generally be satisfied that the parents will voluntarily continue with such services or other arrangements**

> **as are necessary for the continued protection of the children, beyond the end of the proceeding. Ultimately, parents must assume responsibility for parenting their children. The Act does not contemplate that the Agency shore up the family indefinitely."**

[58] **H.A.N. v. Nova Scotia (Community Services), 2013 NSCA 44:** Fichaud, J., stated at **paragraph [39]:**

> **"Section 22(2) of the Act states that a child is in need of protective services in a number of situations including a "substantial risk" of harm. Section 22(1) says that "substantial risk" means "a real chance of danger that is apparent on the evidence". The standard does not require that the judge be satisfied the future risk will materialize. But the judge must be satisfied, on the balance of probabilities from the evidence, that there exists a real possibility the risk will materialize."**

BEST INTERESTS OF THE CHILD

[59] The law is clear, both from a legislative and jurisprudence stand point: the best interest of the child is the heart beat of any matter involving children before this court. The evidence a court considers in making a determination is meant to reflect that.

ANALYSIS

[60] Although the jurisprudence in concert with the legislation provides a clear roadmap for a Court to follow when considering the state's application to permanently remove a child from his or her parents, each case must be considered on it's own merits.

[61] It is only in the most tragic and desperate circumstances that a Court should contemplate removing a child from his or her family of origin.

[62] Mindful that the standard of proof is proof on a balance of probabilities, the court has compiled the following roadmap to be used when considering the evidence:

(a) Is the child in need of protection pursuant to one of the enumerated grounds of section 22(2) of the Act;
(b) Is there a possibility of risk;
(c) Is the Court satisfied on a balance of probabilities from the evidence that there exists a real possibility the risk will materialize;
(d) Have services been successfully completed allowing the Respondents to gain insight into their domestic issues, substantially eliminating or reducing the risk;
(e) Have all reasonable measures, including placement with an extended family, been exhausted;
(f) Have less intrusive alternatives in the form of services or assistance been attempted and failed;
(g) Have these services or assistance been refused by the parent;
(h) Would these services and assistance still be inadequate to protect the child;
(i) Is there clear, convincing and cogent evidence that permanent care is the only option

available for this child;
(j) Has a stable and safe level of parenting been achieved;
(k) Is the Court satisfied that the services afforded the Respondents to assist with their parenting abilities will voluntarily continue beyond the end of the proceedings;
(l) If the services were to be voluntarily continued would they be enough to adequately protect the child;
(m) Are the Respondents capable of employing good enough parenting to raise this child in a nurturing, stable, secure and learning environment where the child will know love and kindness and mature to his or her full potential;
(n) Whether circumstances have changed since the granting of the last disposition order;
(o) If there is a change in circumstances, is it for the better or has it worsened; and most important,
(p) Using a child-centred focus, how will the best interests of the child be best met.

[63] The Court has great sympathy for the Respondents, DAB and BAH. Their lives have been built on turbulence and upheaval. In their younger lives they suffered hardships, tragedies and indignities no child or youth should ever have the burden to bear. As argued by counsel for DAB her parents had "…a very negative and harmful influence on her."

[64] Had the Respondents been afforded the dignity and kindness that all children deserve, they would likely be very different people. The Court noted that in spite of the lives they have lead, they both have a gentleness about them, a kindness and a desire to do the right thing. The Court is vested, however, in using a child-centred focus and making a determination that will be in the best interests of the child, and not based on sympathy for the child's parents.

[65] The Court finds that all reasonable measures to keep the child with one of his parents have been attempted and failed. Services have been tried and failed. The Court is not convinced the Respondents would voluntarily continue services after the Court proceeding. Psychologist Ms. Pick volunteered to continue seeing BAH in a ***pro bono*** capacity, but he did not avail himself of this offer. The Court finds that as often as services are offered to DAB and even though she avails herself of them, she does not learn from them.

[66] Counsel for DAB argues *"…her immaturity, really bad luck with her family of origin and choice of intimate partners … are problems a Court could reasonably conclude will be overcome with time and will not pose any significant child protection concerns."* This is the third time the child was apprehended from DAB. He is only three years old. He was apprehended because DAB and the child M.B. were in the presence of J.H. and J.H. was on a bicycle with a newborn child under his arm.

[67] The Court finds that DAB is easily led by the abusive men with whom she chooses to partner. Although DAB's immaturity and "really bad luck" in her choice of partners may get better with time, this child does not have the luxury of time to be wrenched from a parent to a foster home and back who knows how many times before DAB finally "gets it". Kevin Graham, who prepared the parental capacity assessment for the court noted of DAB: "*When it comes to stability [DAB] is found wanting. Her lifestyle is very unstable… since the assessment process*

began she has lived at three if not four different places and been involved in two relationships and I question whether her current relationship will be a lengthy one."

[68] Mr. Graham further testified: "I would have loved to recommend we keep working with [DAB]. But I've got to think of [the child, M.B.], and that [to continue working with DAB] would further damage an already damaged child.

[69] Although the assessment is but one piece of the puzzle, these comments are reflective throughout the evidence and the court finds there is truth in what Mr. Graham has noted.

[70] The Court finds that for the purposes of this hearing, DAB's plan was to parent the child with J.H. This was her plan in spite of the fact that he was the reason her children were taken into care.

[71] J.H. was an abysmal witness for DAB, and that is putting it mildly. The Court finds he was not a credible witness. The Court finds his version of the bicycle incident not credible. If he were merely straddling the bike, DAB would not have been walking to catch up with him and the infant.

[72] The Court finds the new evidence did not change the court's opinion with respect to J.H. who presented on the Applicant's very skilful cross-examination as an angry, hostile, emotionally violent young man who should have no place – at this point in his life - in the parenting of a young child.

[73] But it wasn't that J.H. was a violent person that turned the tide for DAB. It was the fact that she had ***chosen*** to be with him, when being with him cost her the ability to raise her child, not once, but twice.

[74] She did have other options. The previous plan was to reside with her godparents with the children. In an affidavit filed by her godparents, they were willing for DAB who was "… like a daughter to them…" and her children to live with them for as long as she needed, and fully cooperate with the Agency.

[75] DAB vetoed this plan, moved in with a new abusive partner and then moved back with J.H. The Court finds this decision to remove herself from the home of her godparents to involve herself as above was ill advised.

[76] Counsel for DAB argues that since the hearing she is reverting to her previous plan of care: the godparent plan. Counsel for the Applicant argues that DAB specifically testified to the issues within her godparents home, which led to her leaving that home and "…abandoning the plan she put before this honourable court in September 2014. She left the … [godparent] plan behind and established a new – and abusive – partner in the fall of 2014."

[77] The Court finds DAB cannot resurrect the godparent plan at this time. Even if the godparent-plan were an option for the court to consider, there is not enough evidence to know how, or why or what it actually is. How could a court seriously consider the statement: "That

DAB is residing with … [the godparents] in HRM," to mean anything, let alone be in M.B.'s best interests? How could the Court, or even the godparents, be confidant that this time DAB would stay with them? How could the Court believe even if the godparents and DAB had actually testified that this was now the plan – and given the evidence - that DAB is now capable of putting the child's best interests first? The Court finds the child, M.B., would not be protected in DAB's care.

[78] BAH became engaged to C.K. almost on the "eve" of these proceedings, in spite of the numerous difficulties within that relationship - quite possibly because he believed this gave him a better chance to be granted custody of M.B. The court has no confidence this relationship will last. As noted by Mr. Graham that they became engaged during the parental capacity assessment is entirely too coincidental.

[79] The Court finds that BAH has neither shown consistency nor insight to parent this small child. He has not shown sufficient control over his own issues and actions to allow the court to believe he is able to put M.B.'s issues before his own. Returning the child to BAH would be inadequate to protect the child.

[80] The Court finds both DAB and BAH led capricious lives somehow lacking the ability to just do what needed to be done to raise this child.

[81] The Court finds neither of the Respondents are capable of employing good enough parenting to raise this child in a nurturing, stable, secure and learning environment where the child would know love and kindness and mature to his full potential. As argued by counsel for the Applicant: *" … [the child, M.B.] … has waited the entirety of his life for his parents to be able to address their own issues and reach the capacity to provide him with stability... they have not reached that capacity."*

[82] One of the factors for evaluating the best interests of a child the Court considers of great importance is the emotional well being of the child. As stated in **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.), [1994] 2 S.C.R. 165, paragraphs 40-42**: *"The determination of whether the child continues to be in need of protection cannot solely focus on a parent's parenting ability … but must have a child-centred focus and must examine whether the child, in light of the interceding events, continues to require state protection."* In this case, the Court finds that the continued poor choices made by both of the Respondents necessarily dictates that M.B. is still in need of state protection. Neither of them – perhaps for a multitude of reasons – appear to be child-centred.

[83] The Court must be concerned with possible risk and therefore must be satisfied before ordering permanent care, in the words of Fichaud, J., *"… on the balance of probabilities from the evidence, that there exists a real possibility the risk will materialize."* I am satisfied there is a real possibility of risk. Given the evidence and given that the past may well be the best predictor of the future, the risk is too great.

CONCLUSION

[84] The Court has only two options available: dismiss or order permanent care.

[85] Making a decision in the best interests of a child involves predicting what the Court determines, based on the evidence, to be the best future for the child. The decision to permanently remove a child from his family of origin is perhaps the most tragic decision a court has to make. It is not made lightly.

[86] I have considered all of the evidence, the roadmap as noted above in light of the evidence, and the mandate and legislative framework of the Children and Family Services Act.

[87] In so considering I have tried to view the facts in the best light possible to determine if there was even a glimmer of hope that would allow this court to find it would be in the best interests of the child to return him to one of the parents.

[88] Sadly, I cannot. It is in the best interests of this child to be placed in the permanent care of the Applicant.

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Marci Lin Melvin, J.F.C.
May 23, 2015