

IN THE FAMILY COURT OF NOVA SCOTIA

Citation: Nova Scotia (Community Services) v. D.N., 2009 NSFC 13

Date: 20090624

Docket: 07Y053958

Registry: Yarmouth

Between:

Minister of Community Services
(Formerly Family and Children's Services of Yarmouth County)
Applicant

v.

D.N. & W.S.

Respondents

Editorial Notice

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

Restriction on publication: **PUBLISHERS OF THIS CASE PLEASE TAKE NOTE** that section **94(1)** of the **Children and Family Services Act** applies and may require editing of this judgment or its heading before publication. Section 94 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.

Judge: The Honourable Judge John D. Comeau, Chief Judge of the Family Court for the Province of Nova Scotia

Heard: March 31, 2009, April 29, 2009 & May 11, 2009, Yarmouth, Nova Scotia

Counsel: Martin Pink, QC, for the Applicant
Wayne Rideout, Esq., for the Respondent, D.N.
W.S., Respondent, not present nor represented

THE APPLICATION

[1] This is a decision following a disposition hearing under Section 41 of the *Children and Family Services Act*. By court order, rendered November 19, 2008, the time for holding the disposition hearing was extended in the best interests of the children. There have been numerous consent extensions for both the protection and disposition hearings.

[2] The original application was commenced on the 30th day of July 2007, alleging the children, M. born March *, 2005 and A. born September *, 2006 were in need of protective services under Section 22(2)(b) of the *Children and Family Services Act* as follows:

22(2)(b) There is a substantial risk that the children will suffer physical harm inflicted or caused as described in clause (a)

[3] The parties, as indicated by the heading, are D.N. and W.S. D.N. is the mother of the two children, while W.S. is the father. He is sometimes referred to in reports as W.S.(S) or in short, B.S., and in this decision he will be referred to as

W.S. unless the Court quotes parts of a report that refers otherwise. Reference is also made with respect to an older child, S., (the Respondent, W.S., is not the father) who the Respondent mother gave over custody to her Aunt (it is unknown whether this has been formalized).

[4] At the protection hearing the Court found the children to be in need of protective services. This hearing was held on March 12, 2008 and resolved by consent of the parties. The facts on which the finding was made are set out below based on the affidavit of the Minister's agent, presented at the five day stage.

ISSUE

[5] Whether the children should be placed in permanent care or returned to the parent by way of a supervision order?

THE FACTS AT THE PROTECTION HEARING

[6] Nicole Vacon, the Minister's Agent, advised the Agency (Minister) had dealt with the Respondent mother and her family (her and her father) off and on since

2002. This Agent became involved on April 24, 2007, following a complaint of sexualized play between her oldest daughter, S., and another child her age. Another complaint was received about this same child having a bruise on her eye that may have been caused by the maternal grandfather. This was found to be inconclusive but the Respondent mother placed this child with her Aunt, L.D., with the intent to “sign custody over to her.”

[7] A further referral was received of a domestic altercation between the Respondent mother and the father of the two children (W.S.), the subject of this proceeding. This occurred when the children were present in the home. Both parties were placed on an Undertaking not to have contact with each other but the Respondent mother now faces a charge of breach of an Undertaking.

[8] During the months of May, June, July 2007, the Agency met with the Respondent mother to focus primarily on her ability to effectively parent the two children. Of particular concern was cleanliness of the residence, children’s hygiene, their clothes, her ability to manage money, pay her bills, maintain power and properly medicate the children (for over and under medicating). Her home was a

mess and at one point, power was disconnected (re-instated by the intervention of Income Assistance.) She moved three times in a three week period.

[9] Numerous services were provided to her and she requested a case conference but failed to attend. The comments of the service provider are attached to the Agent's initial affidavit.

FAMILY SUPPORT WORKER

[10] This worker was involved with the Respondent mother during three separate periods beginning June 2003. All these involvements "were fraught with inconsistencies." She was in and out of a relationship with two men and there was never permanency or planning with respect to her oldest child at this time.

[11] She did not wish to focus on parenting topics and was argumentative and demeaned the worker. There continued to be no consistency or routine in the home. Instead of spending money on necessities, rent, power, phone, she purchased digital cable, movie channels and the internet. It was agreed with the Agent involved at the time, this service should be terminated because the worker felt none of the work

was being done and nothing accomplished as the Respondent mother did not follow through with any of the information.

ASSESSMENT - PUBLIC HEALTH NURSE

[12] The Public Health nurse completed a Nursing Child Assessment Satellite Training Scale with the Respondent mother concerning the children. (July 9, 2007)
Areas of concern resulted.

Difficult Life Circumstances Scale

[13] She scored greater than 6 which is a concern for parenting. Her score has worsened from the second to third child from a score of 6 to a score of 10.

Community Life Skills Scale

[14] She demonstrated ability to further her knowledge as she participates in the Healthy Beginning Program.

Feeding Scales - M.

[15] Following a repeat feeding scale for M. on October 26, 2006, she demonstrated a significant improvement in the Sensitivity to Cues Sub-scale and the Cognitive Growth Sub-scale.

[16] She demonstrated no change in the Social-Emotional Growth Fostering Sub-scale with a score at 0.28 standard deviations below the mean. On the Response to Distress Sub-scale, she demonstrated a significant decrease in her score, falling 1.16 standard deviations below the mean.

[17] The conclusion of the nurse is that the Respondent mother showed a decrease in scores on all NSAST assessment sub-scales during the period of her involvement with the Healthy Beginnings Program from May 6, 2005 to June 22, 2007.

DR. DOMINIQUE COUTURE - PEDIATRICIAN (WRITTEN)

[18] In a letter dated July 10, 2007, Dr. Couture, who has known the Respondent mother for several years (treated her for ADHD), treated the children as well.

I have always noted that D.N. has a difficult time taking in information and following through on recommendations. I have had ongoing concerns about her ability to parent the children effectively.

[19] He was very concerned about her ADHD and recommended a referral to another doctor.

COMMUNITY HOME VISITOR COORDINATOR - PUBLIC HEALTH SERVICES

[20] This is the Healthy Beginnings Entrance Home Visiting Program referred to earlier and it is a voluntary service offered up to the focus child's third birthday.

The aim of the program has pre-natal and post-natal initiatives as its aims as follows:

- Enable pregnant women, their partners and their families to achieve healthy pregnancy, optimal with outcome and positive adaptation to parenting.
- Promote the optimal level of physical, cognitive, emotional and social development of all children in Nova Scotia
- Enhance the capacity of parents to support healthy child development.
- Contribute to a coordinated, effective system of child development services and supports for children and their families.

[21] During these home visits the following topic areas were covered:

Invest in Kids:

Activity #29 “Feel Wheel”

“The Juggling Act”

Growing Great Kids Curriculum:

0-12 Months, this was done twice

13-15 Months.

25-30 Months.

Growing Great Families Curriculum:

Unit #1, Module #1, “What I’d like for my child”

Unit #2, Module One, “Sizing Up Your Strengths ... Reducing Stress”

Growing Great Kids Pre-Natal Curriculum:

Module #6, “Nourishing Your Heart and Soul”

Module #11, “Preparing for Labor and Delivery”

Module #12, “Bringing baby home”

Maternal Mental Health:

Unit #6, Making Space: Personal and Baby’s Circle of Support

My Baby's First Picture

Baby Predictions

Budgeting Activity:

“Where my money goes”

“How I will stop spending”

TRI-COUNTY HOUSING

[22] A report from the Field Officer for the local housing authority of an inspection of the Respondent mother's housing unit was carried out on July 12, 2007. At the time, power was disconnected and the unit at risk of mould and decay. Food in the refrigerator had begun to rot and decay causing an extremely offensive smell. This and fruit flies pervaded the kitchen where food and garbage was left lying about. The cupboards were crammed with garbage and soiled clothes. The odour of soiled diapers and human waste was prevalent with human faeces smeared on the walls.

[23] The upstairs was no better with clothes littering the floor and windows left open causing rainwater to be all over the floors.

Based on some of the above observations, we have concerns about the welfare of the children being in the unit which is only heightened due to lack of power.

[24] The Department of Community Services, who provided financial assistance, paid N.S. Power three times, although this was provided for in her assistance package. Rental payments in 2006 were paid direct to the Tri-County Housing Authority because of increasing arrears.

EVIDENCE AT THE DISPOSITION HEARING

[25] The case on the part of the Minister consisted of a number of professionals, one of which prepared a written report (dated February 28, 2008) which is entitled Assessment Report and was prepared by Heather Cake, M.A., Registered Psychologist, with the Izaak Walton Killiam Health Centre.

[26] The reason for the referral set out in the report is because of the apprehension. Concerns identified included; domestic violence, inability to parent the children, inability to meet basic needs of the children and whether there was proper administration of the children's medication. A referral was received in

August 2007 to evaluate the parenting abilities of the Respondent mother and W.S. who is the father of the two children who are subject of this proceeding.

[27] In her oral evidence, the Assessor indicated that she found permanent care was in the best interests of the children. That the Respondent mother lacked insight into the children's health and realization of her own deficits. There was also lack of acceptance of responsibility of the children. She was challenged to interact in a positive way with her children. Her own needs were met before that of the children.

[28] The Assessor observed no effort to give emotional support to a crying child. She is concerned about the Respondent mother's long term parenting abilities.

[29] Under the heading of formulation, the Assessor outlines the reasons for her recommendations for permanent care and custody with one last visit.

FORMULATION

M. 35 months and A., 17 months are the biological children of D.N. and B.S. This assessment was requested due to concerns regarding Ms. N's neglect of children, poor parenting skills, residence instability and domestic violence. An assessment of Mr. S. was also requested due to substance abuse and domestic violence.

Ms. N. is a woman whose experiences in her family of origin were extremely physically and emotionally abusive. Ms. N. was challenged to identify any positive aspects of her childhood and adolescence. Ms. N. did not have a

foundation of security, safety or emotional acceptance. This has significantly impacted her own ability to parent her children in an emotionally and physically healthy manner. Ms. N. has had several years of support around daily living and parenting for which minimal progress was obtained by Ms. N. The professionals that have attempted to assist Ms. N. have presented the material at a level that is appropriate given that Ms. N. has a cognitive delay, yet Ms. N. continues to be challenged to incorporate this knowledge into the basic and daily care of her children. Ms. N. presents to most professionals with whom she has worked as very dependent and interactions are often crisis-driven. Ms. N. has no insight into her role in having her children being taken into Temporary Care but instead externalizes the blame. Ms. N. has chosen not to seek mental health counseling which may have helped her to gain insight into the impact of the parenting she received in her family of origin on her own parenting ability.

Mr. S. presents as a young and immature man. Mr. S's described family of origin was stable and nurturing. Mr. S. has a significant relationship history with Ms. N. and he has actively parented M. and A.. Collateral sources did not express concerns related to Mr. S's parenting. However, Mr. S. was not a protective factor for M. and A. and he perceived Ms. N. as a competent and good mother. Mr. S. has minimal insights into the reason the children were taken into care. Mr. S. has not shown a commitment to his children since they were taken into care. He missed several access visits and has not contacted the agency worker to regain access to his children. Mr. S. only appears committed to not having another man raise his children versus making a commitment to the children. Mr. S. has a significant substance abuse history. Mr. S. denies having a problem with alcohol and drugs and states that he can quit anytime. Mr. S., by his report, is getting drunk every second day. This prohibits him from providing care for his children that would meet their emotional and physical needs.

The environment for M. and A. during the time this couple were together was undoubtedly one of transience and unpredictability. The children were frequently sick, unclean and poorly nourished. Ms. N. would defer to others to help provide care for her children. Her own dependency needs superseded those of her children's needs for safety, security, and stability. Ms. N. denies any issues with her parenting. Ms. N. also denies feelings of anger or being overwhelmed. Thus, Ms. N. continues to present herself in a favorable light despite significant evidence to the contrary. This will significantly limit Ms. N's ability to benefit from any further intervention around parenting. Mr. S's substance abuse has had an impact on his relationship with Ms. N. and an impact on his ability to be there for his children. Mr. S. has not been a parent to either M. or A.. Several collateral sources have noticed significant positive changes in the affect of both A. and M..

In addition, the children have been clean and healthy, most notably M. has been free of any seizure activity.

Both M. and A. have experienced profound neglect of their needs. Neither Mr. S. nor Ms. N. have demonstrated an ability to be emotionally and physically available to their children nor have they demonstrated an ability to consistently provide the basic health and safety needs for M. and A.. The absence of acceptance of responsibility and inability to separate their own needs from those of their children poses significant emotional and physical risks for these children.

RECOMMENDATIONS

It is recommended:

- 1. THAT** M. and A. N. be placed in the Permanent Care and Custody of Family and Children's Services of Yarmouth County and an adoption placement be secured which will allow them to remain together.

- 2. THAT** The Agency arrange for a final visit between the children and their respective parents.

[30] Cross-examination revealed that certain statements made by the assessor, "D.N. has not demonstrated an ability to consistently provide her children with adequate shelter, health care or a safe environment" come from collateral sources. This and other statements in the report are hearsay. She actually made the following observations.

Ability to Separate Parent's Needs from Child's Needs

Ms. N's inability to separate her own needs from those of her children is primarily reflected in her interpersonal and professional relationships. Ms. N's relationship with Mr. S. was fraught with allegations of domestic abuse and addiction issues for Mr. S. Ms. N. chose to stay in this relationship despite these allegations. When there were allegations that Mr. S. had hit S., Ms. N. advocated that Mr. S. be able to stay in her house to look after the two youngest children so that she could do his early morning paper route. Ms. N. also expressed concerns to the agency worker that the investigation by the RCMP may impact her ability to get employment. Ms. N. at no point acknowledged that the children's need for physical safety should be the priority but instead chose to provide shelter for Mr. S. and consider the impact on her own employment options.

Ms. N. told the assessor that she became involved with Mr. C. in November, 2007. Ms. N. indicated to the assessor that Mr. C. was the person with whom she had the most significant relationship and described what a great person he was with her kids. M. and A. were in the Temporary Care and Custody of the agency at this time, and there was only limited contact with their mother on three access visits per week. Ms. N. has chosen to introduce Mr. C. to her children and have him present on the access visits. When the assessor observed the access visit, Mr. C. was present and Ms. N. appeared to be content with him having the majority of interactions with her children. Ms. C.(sic) showed no insight into the potential impact on her children of having a new partner when they had already experienced many changes in their lives and the people they were meeting.

In speaking with professionals that have been involved with Ms. N. for some time, they indicated that Ms. N. becomes very dependent upon them and will call them frequently to seek support for herself and her children. Although Ms. N. seeks these supports out for herself she does not follow through on the recommendations of those professionals that would potentially benefit her children.

Ms. N. has not been consistent in her planning for her future education, employment or residence. Her consistent lack of follow-through with planning does not bode well for future decision making with regard to herself or her children.

IMPACT OF PARENT'S FUNCTIONING ON PARENTING ABILITY

Acceptance of Responsibility

There is minimal evidence to support that Ms. N. takes any responsibility for the fact that two of her children have been taken from her care. Ms. N. sees herself as a competent parent with no weakness and who never feels overwhelmed. This is an unrealistic perception. Ms. N. has consistently blamed others for the negative occurrences in her life. For example, when M. went missing, Ms. N. blamed the housing authority because they would not install a higher lock on her door.

The lack of acceptance of responsibility is partially reflective of Ms. N's apparent inability to reflect upon the consequences of the choices she has made. Ms. N. has been offered opportunities to receive therapeutic support to assist her in dealing with the traumatic experiences she had in her own childhood. Ms. N. has not followed through on the opportunities that have been provided to her. The insights with regard to how her own parenting history could impact her parenting her own children has been an opportunity that Ms. N. has chosen not to pursue.

The chronicity of lack of acceptance of responsibility can be illustrated through the following examples. Ms. N. described the difficulties she experienced as a function of her parents moving a lot and the frequent changes in schools. Yet, Ms. N. has not provided her own children with a stable residence. Ms. N. has had a lot of support to maintain her family in housing, yet, Ms. N. has chosen to move many times. For example, Ms. N. had decided to move to *, Nova Scotia, the family support worker cautioned Ms. N. about moving from a housing unit and reminded Ms. N. to "...think about things like living out of town and being dependent on others to transport her, how she would get S. to day care, the finances of the new place and so on." Ms. N. still planned to move to *, despite the amount of change this would present for her three children. Ms. N. has not taken responsibility for the financial decisions that she has made. Ms. N. had received a lot of advice and support around budgeting and a number of her bills were paid directly through income assistance. However, Ms. N. was often in arrears which resulted in power being disconnected and her children being moved.

Ms. N. has been reported to respond defensively particularly in relation to child-rearing as her belief is that she is a capable and competent parent. She has consistently demonstrated a lack of commitment to services put in place by the various agencies to support her to get her children back in her care.

[31] Further revealed on cross-examination, the assessor always wants to maintain an unbiased approach before meeting the persons she is to assess. “We are an objective third party. That is why we are hired a lot. My goal is to determine what is in the best interests of the children.”

[32] No services have been provided to the family from February 28, 2008 (date of the report) because the recommendation was for permanent care and custody.

[33] When asked if removing the father from the home (eliminating domestic violence) solved the problem, the Assessor indicated this was only one piece of the puzzle. The problems with the Respondent mother have been referred to earlier which can be a consequence of her upbringing as well as exposure to domestic violence.

DR. DOMINIQUE COUTURE - PEDIATRICIAN (ORAL EVIDENCE)

[34] Dr. Couture testified that the Respondent mother was referred to him when she was 10 years old and he has also seen all of her three children.

[35] He noticed that the older child, S.'s (placed with an Aunt) "behaviour changed because of a more stable nurturing environment."

[36] The doctor came to Court with a letter dated July 25, 2008, sent to her counsel.

There have always been serious concerns regarding D's abilities to parent children or to manage her own affairs.

Her children had some legitimate medical issues but it was often difficult to obtain reliable/credible information. It was also apparent that D.N. did not seem to take in information well or was unable to follow through on recommendations. As well, the children had very frequent contacts with a number of health care professionals and showed developmental and behavioural problems. As soon as they were removed from D.N's care, the frequency of medical visits plummeted and medical and development issues resolved within a brief time frame. These observations were the basis for the recommendations that the children remain in their current environments.

D.N. dropped in on for a visit July 23, 2008 (without an appointment). She stated that her situation had changed dramatically and that she felt she was now better able to assume care of her children. As the parenting assessment was not completed by me, I suggested that she have the appropriate reassessment done by the team from the IWK. This, in an effort to document whether there has been a significant improvement in this area. My primary involvement with this family has been with the three children, who are, at this point, showing significant improvements in their new environments.

PSYCHIATRIC EVALUATION AS PART OF IWK REPORT

[37] The Respondent mother, whose date of birth is January *, 1985, was referred by the IWK assessor, Dr. Khalil Ahmad, who is a psychiatrist.

[38] After reviewing her history, he found there “were no symptoms of obsessive compulsive disorder or any phobia.” She shows symptoms of adult ADHD and should be referred to a psychiatric outpatient clinic for that. He also found dependent personality traits.

PARENTING ASSESSMENT - MICHAEL S. DONALDSON

[39] Michael Donaldson, Family Therapist, prepared two reports, one dated June 16, 2008 and the other March 20, 2009. The referral source, set out in the report, was the Respondent mother’s counsel. He interviewed a number of persons and had access to the other reports referred to above. His earlier report recommends giving the Respondent mother an opportunity to demonstrate her current parenting abilities. It appears Family and Children’s Services (the Minister) did not provide for this.

[40] The assessor felt once the abuse from the father was eliminated progress could have been made.

[41] The updated report of March 2009 indicates that the children remain in care since July 16, 2007 although the Respondent mother does not have a relationship with the father. An attempt was made to place the children with the Respondent mother's maternal aunt but because she smoked around the children (A. has asthma) those plans fell through.

[42] At the time of this assessment and the court hearing, the Respondent mother resides with one A.A. She is pregnant with his child.

[43] The Respondent mother was very unhappy with the failure of the third party placement.

D.N. expressed frustration that the decision to not place the children with her aunt, and while not her preference it was preferable to permanent placement outside the family, was unfair. She maintained that the reason given to her was that her aunt smoked around the children and after returning from an access visit M. had an asthma attack. "They said that M. told the Social Worker that K. smoked around her." She related that after a brief investigation of her own, M. was not aware what a cigarette was.

[44] This quote refers to M. having the asthma attack while the Agency plan refers to A. having this problem. It can be assumed cigarette smoke is hazardous to both children's health.

[45] The assessor refers to a number of things from an abusive relationship ending, mental instability and ability to cooperate with the Minister's agents as reasons why the children should eventually be returned to the Respondent mother.

It is my opinion that D.N. has become much more open to receiving support than in the past as demonstrated by her current involvement with a variety of professional services. This was one area of ongoing concern that despite repeated attempts to facilitate D.N.'s accepting outside intervention, she was non-compliant. As of this assessment date she has established both in home supports as well as Mental Health supports. It is significant to note that these supports were apparently sought out and maintained by D.N. herself.

D.N.'s inability to establish a supportive relationship with Family & Children's Services is in my opinion, significant. D.N. raised a number of concerns that range from the children being physically hurt while in foster care, her opinion that there are inappropriate things being told to the children about their future, concern regarding unsafe transportation for the children to access visits that were reported to the police, and finally, a Social Worker who she has asked to have replaced because of the family history. Thus it remains a possibility that it is not that D.N. is unable to receive help but rather the circumstances and personalities involved have contributed to this unfortunate situation.

While it can be expected that there will continue to be ongoing changes in her life, in my opinion every effort should be made to facilitate the children's eventual return to her care.

DR. OLEWOLE - PSYCHIATRIST - REPORT

[46] Dr. Olewole gave oral evidence and supplied a written report dated April 22, 2008. In this report his conclusion (after referring to the Respondent mother's mental and family history) are as follows:

IMPRESSION

My impression at this time is that this lady does not have ADHD even in the absence of formal testing. I do think that she has taken time to mature, had features of truancy and oppositional defiant disorder in her younger years and suffers from chronic low esteem.

All this in themselves will not be sufficient to restrict her access to her children.

RECOMMENDATIONS

1. While she is seeing her children for about two hours thrice weekly at the moment, this can be extended if that is deemed to be feasible to a couple of more hours to observe the interaction more closely.
2. The length of the time she will be spending with her children should be gradually increased until she has them on at least one overnight basis. If that goes well, then that can be increased to a weekend. If things go well at that stage, I think a strong case could be made for her to have full custody of the children again.
3. I think it may be necessary for a case conference to be done at some stage if that would be acceptable to Family and Children's Services.

DR. OLEWOLE (ORAL TESTIMONY)

[47] The doctor saw the Respondent mother on the following dates: April 22, 2008, May 30, 2008, July 10, 2008, September 17, 2008, February 4, 2009.

[48] She was referred to him by her family doctor and primarily he found no mental illness and he did not identify any reason why she should could not parent. The question is, Are supports needed? He says generally persons who have been abused (as the case is here with the father being the abuser) gravitate towards abusers. This is a trauma that usually takes six months to a year to overcome. Both emotional and cognitive ability is hampered and consequently when an assessment is done this trauma factor should be considered.

[49] Dr. Olewole believes the Respondent mother needs help to transition to kids for a number of reasons including, she did not have a good parenting model to follow, has gone through a lot of trauma and needs counselling.

[50] He believes the children should be returned to her on a gradual basis and she should work with the Minister's agents. He has not seen the Respondent mother

interact with the children but believes if one is emotionally challenged, it is not easy to function as a parent.

DIGBY COUNTY FAMILY RESOURCE CENTER

[51] The Respondent mother sought services outside of the Agency to assist her in proving her parenting ability. This was as a result of distrust of the Agency and a genuine desire to find something beneficial to support return of her children to her.

[52] Testimony was given by the Director of the Digby County Family Resource Center. It is an organization that supports parents' roles, provides support to families and children.

[53] The Respondent mother initiated contact wanting to know about early childhood development to improve her parenting, much of which the witness said she already knew. She told the center that the program in Yarmouth through the Agency was not very supportive of her.

[54] The Respondent mother said the Agency (Minister) did not protect her so how could they protect her children. “This was very profound for me.” She indicated the Respondent mother was very afraid the center would contact the Agency. “They would give a bad impression for her and would not want me to work with her.” There has to be trust between center staff and the person seeking their services.

[55] This witness indicated when stresses are removed (such as spousal abuse) people improve and thrive and consequently the Respondent mother has improved very much. “She would continue to work with us and will need continued support. Growing up she had no parent models.” A new Agency should supervise her as part of a court order and it would be a slow transition. A third child is going to be a challenge and she believes more services would be needed. This worker believes she is willing and capable of learning.

[56] In Dr. Donaldson’s 2009 report, the Respondent mother says she became pregnant with the third child (due August 2009) despite being on birth control pills. This was confirmed in her oral testimony.

AGENCY PLAN FOR CHILD'S CARE

[57] The Agency requests that the children be placed in permanent care in accordance with Section 47. Reasons given for this disposition have been referred to earlier in facts of the case.

[58] An attempt was made at a third party placement (mother's paternal aunt) but that did not work out as described in the Minister's long term plan of care.

Possible placements with a relative, neighbor or other members of the child's community or extended family that have been considered and rejected and reasons therefore:

C. L., great-maternal-aunt to A. and M., began to join Ms. N's access visits beginning October 3, 2008. Given Ms. N. and Ms. L's identified plan for Ms. L. to become a care giver for the children, the Agency began supervising access between the children, D.N. and C. L. at Ms. L's residence, beginning on October 30, 2008. Prior to and during the children's visits at Ms. L's home, the Agency workers had spoken to Ms. L. on several occasions about A.'s health issues, ie: asthma, and the need to provide an environment that was both smoke and scent free. After the visits began to take place at Ms. L's home, A.'s health began to deteriorate, necessitating him going back on puffers and ultimately ending up at the Outpatient Department due to labored breathing related to asthma. Prior to these asthma related health concerns, A. had enjoyed a period of many months where he had not required any medication for his asthma. Agency workers met with Ms. L. on Monday, November 17, 2008, to discuss our concerns regarding A.'s health issues. During this meeting, Ms. L. confirmed that she and others had continued to smoke in her home during times when the children were not present. Given these

concerns, the Agency is not confident that Ms. L. can provide an environment that meets the children's health needs.

[59] There is no indication the third party was willing to give up smoking and put the children's needs first. This is unfortunate.

[60] The plan summarizes "Despite the interventions of multiple providers over numerous years (the Respondent mother) has not demonstrated a level of parenting ability to meet the needs of her children.

RESPONDENT MOTHER'S PLAN OF CARE

[61] The Respondent mother's plan of care is set out in writing. It is dated March 26, 2009 and is summarized as follows:

1. Problems

Many of the difficulties I faced when trying to care for my children were the result of the abuse suffered at the hand of my partner, B.S. ...

2. Action

During the past 18 months I have made an attempt to better myself and improve my parenting ability. I have received counseling from Barry Weiser and Dr. Olewole at Mental Health. I have met with the Outreach worker at Juniper House to discuss the abuse I experienced and ways to deal with it. In September, 2008, I took a parenting course through Parent's Place. In that program, I learned about

Safety in the Home, Child-proofing My Home, Children's Body, Mind, Behaviour, and Safety. I regularly met with Karen Stewart, support worker from Tri-County Women's Centre, either seeing her or speaking with her on the phone at least twice a week. I talked to her about everything that was going on in my life and she offered support by attending appointments with me, helping me with money management, and listening when I needed someone to talk to.

3. Planned Future Action

I have enrolled in two Parenting Courses, both scheduled to begin in April, 2009.

1. "Better Ways" at Digby Family Resource Centre
2. "1,2,3, Magic", at Parent's Place in Yarmouth, on child discipline.

I will continue to access supports in the community, such as my counselors at Mental Health, Juniper House Outreach, and Tri-County Womens Centre.

I have lots of family support at this time. My two cousins and their children live in the other two apartment units in my building and I receive regular visits from other family members.

My partner, A.A. lives with me and is very supportive and helpful.

4. Her Home/visits with Children

Current Address: *

I have lived at this apartment since November, 2008. For 2 months prior to that date, I lived with a family friend while I looked for an affordable apartment, one that would be suitable for my children and myself. The apartment has 3 bedrooms, a large living room, an eat-in kitchen, and one bathroom. It is a well maintained building with a large, nicely landscaped yard.

My partner, A.A. lives with me. He is twenty three years old. He recently returned home from Alberta where he was working in *. He is currently receiving Employment Insurance benefits in the amount of \$680 bi-weekly until August, 2009. He will be starting an on-line computer repair course in April, 2009. It is a nine month Certificate Course. He is also looking for work, either in construction or in a local computer shop where he could gain hands-on experience in computer repair. (The Respondent mother is pregnant with his child due August 2009)

I presently have two scheduled visits with my children each week. These visits are supervised and take place in S. on Tuesdays and Thursdays from 9:30 - 11:30 am, and they have been going very well. M. and A. are both very attached to me. They are always very excited and happy to see me. As soon as A.'s seat belt in unbuckled, he runs to me and wraps his arms around me. During the visits, we play, colour, and when weather permits, we go for walks, to the playground, out for ice cream, to the beach, and have picnics. M. and A. often cry and cling to me when it's time for me to leave. I often console them by holding up two fingers and tell them, "Mommy will be back in just two sleeps."

5. D.N.'s Plan for the Future (Return of the children)

I would like to have my children gradually returned to my full-time care. At present we have 2 two hour supervised visits in S.. I would like to add a third visit and have that visit supervised at my home on the weekend. After a period of 3 months, I would like to propose that all our visits be at my home and be unsupervised for a further 3 months.

For the next 3 months, I would like the weekend visit to be an unsupervised overnight visit. If these visits are successful, I would like to have the children returned to my full time care on the proviso that Family and Children's Services have scheduled visits and also may drop by my home unannounced at any time to supervise. I would be comfortable to have this arrangement continue as long as the Agency felt it necessary to assure the well-being of my children.

THE AGENT, J.B., AND ALLEGATIONS OF CONFLICT OF INTEREST

[62] The Respondent mother has complained about the Minister's Agent she has dealt with. It is a historical involvement as described by Mr. Donaldson in his 2009 report at p. 5.

D. stated that she has never had the opportunity to be related to as a mature adult by F&CS primarily because of her family history with them. She related that "I've never agreed with [J.B.] being my Social Worker." When queried as to why she felt this way she explained "he was my dad's [Social Worker] as well . . . he brings stuff up from when I was a kid." "When they say things about me . . . being unfit and mentally unstable . . . [it] sounds like they are talking about E.N. . . . I'm not E.N."

[63] This Agent's involvement is one of at least two. It is helpful to have the input from someone who has knowledge of family history because the Court is dealing with the needs and best interests of the children and whether the Respondent mother is capable of providing all those things necessary to the children. Considering the paramount issue, there is no conflict of interest.

THE LAW

Children and Family Services Act

Disposition Hearing

41 (1) Where the Court finds the child is in need of protective services, the Court shall, not later than ninety days after so finding, hold a disposition hearing and make a disposition order, pursuant to Section 42.

Evidence

(2) The evidence taken on the protection hearing shall be considered by the Court in making a disposition order.

Disposition Order

- 2 (1) At the conclusion of the disposition hearing, the Court shall make one of the following orders, in the child's best interest;
- (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 Section 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 Section 43 to 45.
 - (f) the child shall be placed in the permanent care and custody of the Agency, in accordance with Section 47.

Plan for Child

- (3) The Court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the Agency and including,
- (a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services;
 - (b) a statement of criteria by which the Agency will determine when its care and custody or supervision is no longer required;
 - (c) an estimate of the time required to achieve the purpose of Agency's intervention;
 - (d) where the Agency proposes to remove the child from the care of a parent or guardian;
 - (i) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and

- (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and
- (e) where the Agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement.

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

[64] In *F.C.S. of Yarmouth County v. T.S. and W.S.* [2003] N.S.F.C. 15, this Court discussed the general law with respect to the *Children and Family Services Act*.

THE CASE LAW GENERALLY

C.A.S. (Halifax) v. Fairn (not reported) 1992 F.H. (CSA/CAS)(Daley, J.F.C.)

The purpose of the C.F.S.A is the protection of children. As a result, with the exception of providing whether or not a child is in need of protective services, the welfare of the child is the top priority. See RE: *Sarty (1974), 4 N.S.R. (2d) 93* and *Children's Aid Society of Halifax v. Lake (1987), 4 N.S.R. (2d) 361 (N.S.C.A.)*.

The C.F.S.A. promotes the integrity of the family but only in circumstances which will protect the child. When the child cannot be protected as outlined in the C.F.S.A. within the family, no matter how well meaning the family is, then, if its welfare requires it, the child is to be protected outside the family.

C.A.S. (Halifax) v. Emmerson (1991), F.H. CFSA/CAS, (Levy, J.F.C.) (Unreported), page 19:

The very obvious thrust and philosophy of the Act is to assure that parents and children are allowed to stay together unless for clear and important reasons such, of course, is antithetical to the child's best interest. Integral to the legislation is the reasonable provision of the services (Section 13) that are not necessary to accomplish this task.

The Act makes clear in a host of ways, not least in 42(2)... that the severing of parental rights is to be a last step when all reasonable steps to provide services have failed, been refused, or are clearly inadequate to protect the child.

CONCLUSION/DECISION

[65] This is a disposition under Section 42 of the *Children and Family Services Act* and has been ongoing since July 2007. Numerous services have been offered to the Respondent mother in order to keep the family together. The Agency has reached out in an effort to preserve the integrity of the family by offering numerous programs.

[66] The Respondent mother availed herself of some of the programs arranged by the Minister's Agents but because of lack of trust in the Minister, she sought out programs of her own. Her plan, however, contemplates a supervision order with services provided by the Minister and intensive involvement with his Agents.

[67] The whole of the Respondent's evidence centres on improvements to the Respondent mother's parenting abilities. Her historical involvement as a child with Family and Children's Services was not a good one. By her words and actions (seeking services outside of the Minister's involvement) indicates a lack of trust in those she would have to work with under a supervision order.

[68] The Respondent mother's needs have been emphasized in her evidence. Needs such as psychiatric counselling, parenting courses, family support, companionship (men) and the need to have her children back with her. What the Court has to find in the evidence is what the needs of the children are and is it possible for the Respondent mother to provide those needs in an efficient and sometimes compassionate way? The children's needs are for a safe, stable home with a parent who makes them the centre of her life and a parent who understands what her role is in parenting.

[69] During the course of this almost two year odyssey, the Respondent mother has attended many parenting courses working towards getting her children back. She went through traumatic domestic violence (physical and emotional) with the

children's father and says it was because of this she got involved with the Minister and Agents. That trauma is now over and she is able to concentrate on her main quest, getting her children back which is described earlier as one of her needs.

[70] Another need of the Respondent mother is male companionship and during the course of this proceeding, she has had two male companions other than the Respondent father of the children. While working to get her children back (taken because of her lack of parenting skills), she has become pregnant by the man she is presently living with. It is questionable how this would contribute to the needs of the two children, the subject of this proceeding. The independent witness from the Digby County Family Resource Center questioned this, indicating a third child would be a challenge and more services would be necessary.

[71] A recommendation was made to the Minister, and agreed to by the Respondent mother, that the children be placed (temporarily is the only option under the **CFSA**) with a maternal aunt. This fell through because the aunt continued to smoke in the home which was detrimental to both children and had a particular devastating effect on A.'s asthma. There is no indication that the aunt was willing to give up her need for cigarettes for the children's benefit.

[72] The professionals who testified all agreed there would have to be a transition and more service (with a third child extensive services) before the Respondent mother could have the children returned to her. There is a majority consensus that she does not retain what has been learned and if she does, she does not put it into practice. Her actions (finding fault with others) do not indicate she understands the needs of the children and even if she did, she would be unable to satisfy this requirement.

[73] Counsel on behalf of the Respondent mother points to the integrity of the family and the restriction of removing children unless services have been tried and failed. It is clear that an abundance of services have been tried (some have been accepted and some rejected by the Respondent mother) and she has sought out her own services because of mistrust of the Minister and Agents. Her plan contemplates return of the children under supervision of the Minister's Agents. This did not work in the past and is bound to fail again, contrary to the children's best interest.

[74] The Respondent mother is unable to put aside her own needs for those of the children. She has been provided with many services to improve her parenting. The

evidence is clear that she does not retain what has been taught to her. Evidence of her needs before the children's is clear from the establishment of another family unit while fighting to save the one, the subject of this proceeding.

[75] It is in the best interests of the children that permanent care and custody be ordered with no access.

[76] Order accordingly.

John D. Comeau
Chief Judge of the Family Court
for the Province of Nova Scotia