IN THE FAMILY COURT OF NOVA SCOTIA

Citation: Family & Children's Services of Annapolis County v. C.D., 2008 NSFC 11

Date: 20080414
Docket: 03D025669
Registry: Yarmouth

Between:

Family & Children's Services of Annapolis County
(now the Minister of Community Services)

Applicant

v.

C.D., A.M. & M.T.

Respondents

&

M.W., L.M. & G.M.

Third Parties

Publication restriction:	Section 94(1) of the **Children and Family Services Act** applies and may require editing of this judgment or its heading before publication
Judge:	The Honourable Chief Judge John D. Comeau
Heard:	March 11, 2008, in Digby, Nova Scotia
Written Decision:	April 14, 2008
Counsel:	W. Bruce Gillis, Q.C., for the Applicant Patricia Reardon, Esq., for the Respondent, C.D. Matthew Darrah, Esq., for the Respondents, A.M. & M.T. Raymond Jacquard, Esq., for the Third Party, M.W. (joined as a party on the hearing date) L.M. & G.M., self-represented Third Parties (joined as parties on the hearing date)

The Application:

[1] This is a disposition hearing under section 41(1) of the **Children and Family Services Act** concerning the child, S., born June *, 2001 (*editorial note-removed to protect identity*) .

[2] The Respondents in this case include, A.M. and M.T. who are the parents of the child; C.D. who is the paternal grandmother of the child.

[3] The party, M.W., is a step-father of the child and the parties L.M. and G.M. are the foster parents of the child.

[4] The Applicant, agency (now the Minister), is requesting that after the court reviews the evidence that it dismiss the matter and it supports the application for custody under the **Maintenance and Custody Act** to the step-father, M.W. The parents A.M. and M.T. also support his application.

[5] The Respondent, C.D., supports the foster parents who are asking that the Minister be given permanent care and custody and that then the child would be

placed with them for adoption. The Minister agrees it would place the child with them for adoption if permanent care and custody were the decision of the court.

[6] All these persons, other than the Minister, are parties in an application under the **Maintenance and Custody Act.** This application needs amending as the Minister was wrongly named as the Applicant. Counsel for the Respondent, M.W., has undertaken to file a proper application.

[7] The proceeding under the **Maintenance and Custody Act** is an application which will be dealt with separately from this proceeding but because of its relevance to the disposition under the **Children and Family Services Act**, it may be referred to periodically in this decision.

Issue:

[8] Whether it is in the best interests of the child that the court accept the Minister's plan or any alternative proposed.

The Facts:

[9] The child, S., is the biological son of the Respondents, A.M. and M.T. On June 6, 2007, the child was taken into care by the Minister. He was born June *, 2001 (**editorial note- removed to protect identity*) and on the apprehension date was alleged to be in need of protective services under section 22(2)(k) of the **Children and Family Services Act** as follows:

> (k) the child has been abandoned, the child's only parent or guardian has died or is unavailable to exercise custodial rights over the child and has not made adequate provisions for the child's care and custody, or the child is in the care of the Agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child's care and custody.

[10] At the time of apprehension the child was in the care and custody of C.D., his paternal grandmother, and she resided in P., A. C. with two other children, twin girls age five years old. They are the biological children of C.D. and M.W. which means they are S.'s aunts. S. has been cared for by his grandmother since he was under two months old. The Minister had concerns about the immaturity, lack of proper living conditions and lack of parenting skills of the parents and in August

2002, the child was placed in the grandmother, C.D.'s, custody by Family Court order. The parents moved to H. in October 2006 and have not had any contact with S. since then.

[11] The grandmother, C.D., had a very difficult time with S. as is set out in agent Melissa F. Keddie's affidavit dated June 6, 2007.

> On February 22, 2007, I received a phone call from C.D. She was upset and very emotional. She said that she could no longer care for her grandson S., stating that he would not listen to her; that he was aggressive with her two five-year-old daughters; that he was hitting, punching, screaming, hollering, and swearing at her; that she could not handle him. Ms. D. also said that she herself was unwell. She was having suicidal thoughts, was very despondent and depressed. She was overwhelmed with the care of three five year old children, especially with S.'s behaviour problems. She knew she could not continue to care for S. but felt guilty placing him in care. Ms. D. has had mental health difficulties in the past and has accessed services for these, she told me. She had contacted a counsellor through the Employee Assistance Program and had been advised to attend at the local mental health clinic for assessment and treatment of her depression and suicidal thoughts. I agreed to attend at the home to take her to hospital and to place S. in foster care. I did this. Ms. D. signed Temporary Care papers for S.'s placement.
>
> S. adjusted well to foster care. Ms. D. accessed mental health services and intensive family support services through the agency. She obtained leave from her employment because of her stress and mental health issues. Ms. D. requested that S. be placed home on a trial basis, with agency and other supports in place. I moved him home on March 9, 2007.
>
> As. Ms. D. obtained supports and services she became stronger emotionally. She continued to assess if she could keep meeting S.'s needs over the long term. She looked at various options and discussed these with the mental health and agency personnel she was working with.

> On April 27, 2007, Ms. D. requested that S. be placed in temporary foster care again, as she could not handle his behaviour. S. returned to his former foster home on that date. S. remains in foster care with weekend visits home.
>
> On May 23, 2007, Ms. D. told me that she had made her decision, with a very heavy heart, that because of S.'s special needs, she could not provide the care for him that he requires; that S. should have the stability in his life that adoption would give him. She was prepared to sign consents for adoption. She would like to have some ongoing contact with him, if that would be in his best interest. She was in agreement with the process of taking him into care and was consenting to permanent care and custody for the purposes of adoption. She does not believe that her son M.T. or A.M. can safely care for S.. There is no one in either family who could meet S.'s needs, Ms. D. concluded. She has done a lot of soul searching and has had discussions with her family members, concluding that this is the right decision for S..

[12] As mentioned, the parents support the Agency (Minister's) plan which will be discussed later.

The Foster Parents:

[13] The foster parents, L.M. and G.M., after contact and briefing by agents, received S. into their home on May 31, 2007 for a meet and greet. Following this G.M. carried out a transportation contract for the child (to and from school) until the end of June 2007. It was during this period that S. moved into their home and they were granted "restricted foster status" on June 20, 2007. They developed and

continue to have a very good relationship with the grandmother, C.D. Through this contact, sibling access, (S. and his aunts) is arranged.

[14] They have also provided access to the former step-father, and party, M.W. The child spent Christmas with M.W. along with his twin aunts. The foster parents are excellent access facilitators and they have a very close (bonded) relationship with the child.

[15] They have expressed concerns in their affidavit about the state of the child when he returns from visits at M.W.'s home.

> When S. has visited with Mr. W. and Ms. D. he returns to the M's very dirty (clothes, face, hands), is wired from eating too much candy and exhausted at the same time, and usually does not appear to have had a bath while he has been there. It takes him a couple of days before he is rested and gets over his loud and aggressive personality. Until he returns to his normal, helpful, agreeable self, he appears belligerent and questions why he has to do things.
>
> During the course of S. living with the M's there were a couple of occasions when visits with Mr. W. were not possible because of S.'s illness or other activities the M's were involved in with him. Mrs. M. offered on 1 occasion early in the visits to have S. go down for a weekend following the one he was due to go on so that Mr. W. "Would have S. one on one without the girl's being there and be able to spend time with just him". Mr. W. told Mrs. M. that he and Ms. D. have the children (her son by a previous relationship who lives with them and his twin daughters) every second weekend and that on the alternate weekends they did not want any of the children around "as they only had 2 weekends a month when they

> had time to themselves to do what they wanted" and he did not want S. to visit on those weekends.

[16] When the child visits with his grandmother, C.D., it still takes a day or two to get him back to his routine but he is quieter and more subdued following these visits.

[17] S.'s life with the M's is full and rewarding as indicated by the affidavit filed on their behalf.

> He and Mr. M. are inseparable while "doing man jobs" and he is interested in everything. He also seems to get along well with Mrs. M. because he and Mrs. M. go shopping together, go to the shore on Sundays in the summer to "catch crabs" and have french fries to share with the seagulls. They have all sorts of adventures. S. and Mrs. M. picked their own wild blackberries last year and sold 30 pints to a local grocery store. He and Mr. M. are making plans to "build a barn". S. often says to people "this is my life now, L. and G., the farms, the apples, the potatoes and the squash and doing things".

The Child:

[18] When the child first went to live with the M's, the foster parents observed he was loud, overactive and very vocal. Given the interventions of both Mr. and Mrs. M., he has "toned down", goes to church with Mrs. M. and is known in the community. Reports indicate he is doing quite well in school.

Professional Report: (re: child)

[19] In her assessment report, Elaine Boyd, M.Sc., psychologist, comments concerning the child's best interest is expressed as follows:

> Reports suggest that he (S.) has formed a strong and positive bond with his foster parents and that should naturally be taken into account if he is to be transitioning away from residing with them.

[20] Concern over the child's welfare has been expressed by the animosity that exists between M.W. and the grandmother, C.D. An example of this was when the police were called by M.W. because C.D. would not ensure a television set, which belonged to S., was placed in the foster parents home. He also used S. to convey this message to the foster parents.

The Step-father, M.W.:

[21] The parents of the child support the step-father, M.W. and believe it is in S.'s best interests to be placed with him and his common-law wife. They have discussed access with him and have agreed they would have supervised access.

[22] M.W. lives in P., N.S. with his common-law spouse of five years, L.D. She has a son, D., age 12 living with them. M.W. is a clam digger but also does carpentry work. His twin daughters live with, C.D., their mother, and he has them every second weekend. As a step-parent, he resided with the child's grandmother, C.D., and he helped care for S. until he was about six months old. He has continued to have a relationship with the child. In fact, he calls him every Thursday and at the time of his testimony was exercising access once a month. He takes him fishing and four wheeling and the child gets along well with his common-law spouse, L.D. He only drinks occasionally and doesn't use drugs.

[23] At the time of giving his evidence, he did not know anything about S.'s schooling because no one would give him any information.

[24] It is his opinion the child should be with him so he would be with his siblings and other children. S. would be an only child with the foster parents.

[25] The grandmother, C.D., is very critical of M.W. They had a relationship for 12 years and after this was over she says M.W. visited with the children (S. and his daughters) regularly.

[26] She had a difficult time with S. and got the agency involved, the details of which have been described earlier. Her concerns for placement with M.W, and supervised access to the parents, involve M.W.'s alleged use of alcohol and anger problems. She says he has never provided full time care to the child and access weekends can be described as "fun weekends."

[27] Her and M.W. do not have a good relationship and he would not, she believes, facilitate access to her. Placement with M.W. would require a change in schools.

[28] Concern is expressed over the child's parents having any access because they interfere with parenting, do not act safely around the child and have not been a regular part of S.'s life. She observes:

> S. is close to me emotionally and I have observed a positive relationship between S. and the M's. I have been informed and do believe that they will permit contact with myself and M.W.

The Agency Plan:

[29] The agency plan, dated February 4, 2008, that the court is being asked to consider, indicates the following disposition sought:

> Custody of S. to M.W., regular access to C.D., supervised access to A.M. and M.T. (This was to be accomplished by dismissing the **C.F.S. Act** matter and making an order under the **M.C. Act**)

[30] No further detail is provided in this Form 21.12B which has seven items to complete to explain the proposal.

[31] This is a third plan, the first being dated June 6, 2007 and requesting permanent care and custody as a disposition and placement for adoption. At that

time, it was stated “there are no members of the child’s community or extended family who are able to care for S..”

[32] The second plan was dated October 22, 2007 and proposed temporary care and custody to the Agency, anticipating placement with Family, and failing consent on that placement, with the foster parents for adoption.

[33] The agent, Melissa Keddy, testified the reason for the change in the plan is that it is felt S. should be with family. Although M.W. is a step-father, she believes there would be more contact with family members through him. Factors considered would be access to his young aunts, and M.W., and the parents are capable of working together. The Agency is not opposed to supervised access to the parents.

[34] Reference is made to an Assessment Report made by the IWK Health Centre involving two psychologists and a psychiatrist made with respect to the parents and their two other children; M. and L. It recommended they be placed in permanent care and custody. It also recommended no provision for ongoing access with the parents.

[35] The assessor found:

> There is a pattern of instability in their own relationship which is not conducive to a healthy dynamic between themselves or between them and their two children. There have been pervasive concerns throughout their involvement with child protection with regard to their ability to provide a stable and safe environment for their children. This couple presents a reticent to make any changes that would benefit their children.

[36] The Agency commissioned an assessment report on M.W. and his common-law wife, L.D.'s home by Elaine Boyd, M.Sc., psychologist. Two reports were done, an original on January 30, 2008 which was intended to be a clarification of her conclusions from the earlier report.

[37] The purpose of the report was to "determine if their home would be an appropriate placement for S.."

[38] In her conclusions, the assessor refers to the conflict between C.D. and M.W.

> The level of conflict between C.D., and M.W. continues to be concerning and could pose some difficulties should S. be placed in M.W's care. Both are likely to need support in dealing with issues related to S.'s access with C.D. and S. being exposed to conflict between them.

[39] She comments that M.W. has not had extensive experience parenting S. so a transition period is recommended.

[40] In her update to clarify conclusions, the assessor outlines a number of things:

> 1 - There was no proof from collateral sources that M.W.. has a substance abuse problem.
>
> 2 - The version of M.W.'s motivation was discussed because he did not put forward a plan in the beginning. Once he knew the child's father would not object, he got involved.
>
> 3 - Although M.W's common law wife is not physically affectionate towards S., she found a positive attitude and he is comfortable around her.
>
> 4. - She again refers to the conflict between the grandmother, C.D. and M.W. They have different parenting views and there continues to be animosity which would require "managing their relationship if S. is placed with M.W. especially since C.D. is not in favor of such a placement."

[41] The general conclusion of the assessment is that "information gained during the course of this assessment did not identify any significant concerns regarding M.W.'s and L.D.'s ability to parent S.."

The Law:

DISPOSITIONS:

Section 42(1): Disposition Order

42(1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

(a) dismiss the matter;

(b) the child 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 returned to 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 sections 43 to 45;

(f) the child shall be placed in the permanent care and custody of the agency, in accordance with section 47.

Section 42(2): Restriction on Removal of Child

42(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 attempt and have failed;

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

(c) would be inadequate to protect the child,

Section 41(5): Duty of court upon making order

41(5) where the court makes a disposition order, the court shall give

(a) a statement of the plan for the child's care that the court is applying in its decision; and

(b) the reasons for its decision, including

(i) a statement of the evidence on which the court bases its decision, and

(ii) where the disposition order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons why the child cannot

> be adequately protected while in the care or custody of the parent or guardian.

THE CASE LAW GENERALLY:

[42] *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), 15 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.

[43] *C.A.S. (Halifax) v. Emmerson* (1991), F.H. CFSA/CAS, (Levy, J.F.C.) (Unreported), p. 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 a course is antithical to the child's best interests. 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.

Plans of Care:

[44] All parties may present a plan of care to the court. The agency is required to file a formal plan (section 41(3)) and other parties may convey their plan to the court which on occasion has been accepted, orally or in writing.

[45] In the case before the court, the Agency has filed a written plan while the only other plan has been conveyed orally to the court on behalf of the foster parents.

[46] The Agency asks that the matter be dismissed and custody resolved in favor of M.W. under the **Maintenance and Custody Act**.

[47] The foster parents request that permanent care and custody be ordered with a recommendation that the Minister place the child with them for adoption.

[48] The court is the gatekeeper of state intervention and is legislatively assigned the responsibility that the child's best interests are served. (see *Nova Scotia (Minister of Health) v. J.J.* 2005 SCC 12 (CanLII), 23 N.S.R. (2e) 1)

[49] In formulating its plan, the agency may have been thinking about those considerations set out in section 39(8) which follow an interim hearing and placement in the Agency's custody:

> 39(8) Where the agency places a child who is the subject of an order pursuant to clause (e) of subsection (4), the agency shall, where practicable, in order to ensure the best interests of the child are served, take into account
>
> (a) the desirability of keeping brothers and sisters in the same family unit.
>
> (b) the need to maintain contact with the child's relatives and friends;
>
> (c) the preservation of the child's cultural, racial and linguistic heritage; and
>
> (d) the continuity of the child's education and religion.

[50] The following part of the preamble to the **Act** is also applicable.

> AND WHEREAS when it is necessary to remove children from the care and supervision of their parents or guardians, they should be provided for, as nearly as possible, as if they were under the care and protection of wise and conscientious parents;

[51] The disposition section of the **Act** in section 42(3) requires consideration of a relative or community placement. Section 39(8) clarifies why this would be in the child's best interest.

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

[52] The decision of the Nova Scotia Court of Appeal in *T.B. v. Children's Aid Society of Halifax et al* (2001), 194 N.S.R. (2d) 149 placed the onus on a placement proponent to show it is in the child's best interests. Justice Saunders at page 155 discusses this onus:

> Justice Cromwell's words should not be interpreted as imposing either upon the agency or the court a statutory burden to investigate and exhaust every conceivable alternative, however speculative or fanciful. He spoke of *reasonable* family or community options. Neither the agency nor the court is obliged to consider unreasonable alternatives. Their statutory obligation is nothing more than to assess the reasonableness of any family or community alternatives put

> forward seriously by their proponents. By “reasonable” I mean those proposals that are sound, sensible, workable, well conceived and have a basis in fact.
>
> The onus of presenting such a reasonable alternative must surely be upon the person or party seeking to have it considered. It is hardly the responsibility of the agency or the court to propose the alternative, provide the resources for its implementation, or shepherd the idea through to completion.

[53] Where a parent is unable to care for a child, as is the case before the court, her placement suggestions should be given considerable weight. The parent in this particular case is the grandmother, C.D., because of the definition in section 3(1)(r) of the **Children and Family Services Act**.

> 3(1)(r) “parent or guardian” of a child means
>
> (i) the mother of the child,
>
> (ii) the father of the child where the child is a legitimate or legitimated child,
>
> (iii) an individual having the custody of the child,
>
> (iv) an individual residing with and having the care of the child,

[54] The grandmother, C.D., has had the care of the child since he was two months old and she only gave him up because she was unable to care for him given

his character and actions and dealings with two other children in her home. Her suggested placement should be given serious consideration.

Conclusions/Decision:

[55] The court has to consider what is in the best interests of the child. (Section 2(2) of the **Children and Family Services Act**)

[56] There is no definition of family in this statute as is the general case in family law. Black's Law dictionary, revised fourth edition, generally defines it as "a collective body of any two or more persons living together in one house as their common home for the time." Such a description describes what has existed for S. with the foster parents, the M.'s, since June 20, 2007. S. has been parented by the M.'s continuously for almost a year."

[57] The court joined the foster parents as parties to the proceeding pursuant to section 36(1)(f) of the **Children and Family Services Act**. In doing so, the court has considered that allowing them to be parties at the disposition stage is not a common practice but given the dynamics of this particular case, where the parent

(as defined earlier) proposes placement with them and they have been continuously parenting the child for almost a year, it is appropriate. The Agency's plan is to place the child with a step-parent who has never actually provided care over an extended time.

[58] The hesitation of joining foster parents until an application is made to terminate a permanent care and custody order was described by Bateman J.A. in *I.C. et al v. Children's Aid Society of Shelburne County et al* (2001), 196 N.S.R. (2d) 73 at page 85;

> As I have previously discussed, the structure of the **CFSA** leaves open the possibility of latecomers applying to terminate the permanent care order. The fact that the Cs were not parties to the original protection proceeding is not a disentitling factor. That said, for the reasons discussed by Nasmith, J., above, foster parents should not routinely be permitted to join a protection proceeding. This is particularly so before a permanent care order is made. To do so would bring about an undesirable level of complexity and delay and undermine the foster parenting system which is central to the Agency's work. None of this would be consistent with a child's best interests.

[59] The decision is authority for the proposition that if the court orders permanent care and custody the foster parents could apply for leave to terminate. With the granting of a permanent care and custody order, the family unit (which in this case was with the grandmother, C.D.) is dissolved. "On an application to

terminate that order, bonding between the child and his temporary caregivers and the impact upon him of severing that tie becomes a central factor." (see *Catholic Children's Aid Society of Metropolitan Toronto v. C.M.* [1994] S.C.R. 165) In the case before the court, it is in the child's best interest to consider this bond at the disposition hearing for the reasons mentioned earlier.

[60] In determining the best interests of the child, the court should look at this as a custodial contest between the foster parents and the step-father. Neither the grandmother nor the biological parents are involved in this exercise for the reasons referred to earlier. In this contest the court is guided by the decision of Justice Goodfellow in *Foley v. Foley* (1993), 124 N.S.R. (2d) 198 and has considered the following factors.

1. Statutory direction **Divorce Act**, ss. 16(8) and 16(9), 17(5) and 17(6); and s. 18 of the **Maintenance and Custody Act**;

2. Physical environment;

3. Discipline;

4. Role model;

5. Wishes of the children - if, at the time of the hearing such are ascertainable and, to the extent they are ascertainable, such wishes are but one factor which may carry a great deal of weight in some cases and little, if any, in others. The weight to be attached is to be determined in the context of answering the questions with whom would the best interests and welfare of the child be most likely achieved. That question required the weighing of all the relevant factors and an analysis of the circumstances in which there may have been some indication or, expression by the child of a preference;

6. Religious and spiritual guidance;

7. Assistance of experts, such as social workers, psychologists, psychiatrists, etcetera;

8. Time availability of a parent for a child;

9. The cultural development of a child;

10. The physical and character development of the child by such things as participation in sports;

11. The emotional support to assist in a child developing self-esteem and confidence.

12. The financial contribution to the welfare of a child;

13. The support of an extended family, uncles, aunts, grandparents, etcetera;

14. The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child’s entitlement to access to parents and each

parent's obligation to promote and encourage access to the other parent. The **Divorce Act**, s. 16(10) and s. 17(9);

15. The interim and long range plan for the welfare of the children;

16 The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and

17. Any other relevant factors.

The duty of the court in any custody application is to consider all of the relevant factors so as to answer the question,

With Whom Would The Best Interest and Welfare of The Child Be Most Likely Achieved?

[61] Another factor is which party would be more inclined to facilitate access and who is the party that should be given priority over access. In this case, the most important person to be allowed access is the grandmother who has been the real parent to the child. Given the animosity between her and M.W., this factor points favourably to the foster parents who have already facilitated access to all the parties in a very amicable way. If they were to adopt the child, they have indicated

access would still be available to all those persons that are in S.'s life and who he cherishes.

[62] If the child remains with the foster parents, he would continue to have a mother and father figure. Both Mr. M. and Mrs. M. have been carrying out separate parenting roles consistent with this concept. The court has concern over whether M.W.'s common-law wife, L.D., is prepared to provide the mother role for S., something he needs to have continued. M.W. has also admitted that he knows nothing about S.'s schooling while the M.'s have played a pivotal role in S.'s success in education. He is a step-father and has never continuously parented the child. His lifestyle and activities with the child are limited. Fishing and four wheeling is fine but a child needs more exposure to those things that will make him a well rounded adult.

[63] The court having reviewed all the evidence and considered the best interests of S. finds that the Agency plan is unacceptable. That its intent to place the child with a step-parent is contrary to his best interests. S.'s best interests are served by placing him in the permanent care and custody of the Minister with the recommendation he remain with the M.'s (foster parents), anticipating he will

formally be placed there for adoption. In order to facilitate this, no access shall be ordered.

Obiter:

[64] The foster parents' present attitude towards access has been discussed earlier. They have, to date, been good access facilitators. The access they wish to provide, and to whom, will be their decision once the child is adopted by them because they will be his parents and all other parental rights would be extinguished.

[65] At the present time, the court is of the opinion that the biological parents should have no access as they are disruptive to the child's stability and best interests. If it is decided they have access, it should be supervised but not by M.W. because he does not share the same concern as to their suitability.

[66] Access with M.W. does appear to be of benefit to the child and it is absolutely necessary that he continue a regular relationship (access) to his grandmother, C.D.

[67] The court has great confidence that the foster parents will make the right judgments concerning S.'s relationships now and in the future.

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