IN THE FAMILY COURT OF NOVA SCOTIA

Citation: *Family and Children's Services of Queens County v. L.B.,* 2008 NSFC 29

Date: 20080821
Docket: FLPCFSA-050954
Registry: Bridgewater

Between:

Family and Children's Services of Queens County

Applicant

v.

L.B. and S.B.

Respondents

Publication restriction: PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT s.94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION.
SECTION 94(1) PROVIDES:

94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

Revised Decision: The text of the decision has been revised to protect the identity of certain parties. This revised version is released on April 8, 2009.

Judge: The Honourable Judge William J. Dyer

Heard: May 6, 2008 at Lunenburg, Nova Scotia
May 8, 2008 at Liverpool, Nova Scotia
May 9, 2008 at Bridgewater, Nova Scotia
May 13, 2008 at Lunenburg, Nova Scotia

Counsel: Alan G. Ferrier, Q.C., for the Applicant
Janus E. Naugler, for the Respondent, L.B., by her *Guardian ad Litem*, A. Franceen Romney

Tim A. M. Peacock, for the Respondent, S.B.

By the Court:

The Issues

[1] Upon a review of disposition under the **Family and Children's Services Act (CFSA)**, permanent care and custody of a seven year old child is sought. Alternate dispositions proposed on behalf of the parents range from outright dismissal of the proceeding, to repatriation of the child to his parents under agency supervision, to continuation of the prevailing temporary care and custody regime.

The Parties

[2] Family and Children's Services of Queens County is the agency.

[3] L.B. and S.B. are the parents of an eight year old child, D.B. L.B. appears by her court-appointed *guardian ad litem*, Franceen Romney.

History of Proceedings

[4] D.B. was taken into the care of the agency on January 26, 2007 when he was six years old. The agency first placed him in the care of the maternal grandparents. He stayed with them until the end of the school year. After that, he was moved to the home of his current foster parents.

[5] The interim hearings were completed by mid-February, 2007 on a consent footing. There was a consent protection finding on May 23, 2007; and a consent disposition order was authorized on September 6, 2007. The latter was in accordance with the agency's prevailing Plan for <u>temporary</u> care and custody.

[6] The findings were made under section 22 (2) (b) [substantial risk of physical harm] and (g) [substantial risk of emotional harm], respectively.

[7] At a scheduled review of disposition hearing on December 10, 2007, it was learned that D.B.'s ultimate placement, and the merits of the agency's underlying case, would be contested. By then, the agency amended Plan was for <u>permanent</u>

care. Hearing dates were established but adjourned on short notice in late February, 2008 because of a change in the father's employment status and ostensible unavailability to instruct counsel and to attend the hearing. Ultimately, hearing dates for the review were established for May, 2008 with Post-Hearing Memoranda to follow.

The Agency's Case

Dr. Andrew Blackadar, physician

[8] Dr. Andrew Blackadar (Blackadar) has been L.B.'s primary care physician for about five years. Mental health issues have dominated their contacts and persisted. According to Blackadar, L.B. has mainly presented with issues of delusional thought and frequently with some evidence of psychosis. He characterized her as "very cagey when interacting with medical professionals - at least myself".

[9] Blackadar said L.B. is typically accompanied by her husband upon whom she is very dependent. He stated there were several occasions in which there have been "obvious and persistent difficulties with delusional thought", and "with paranoid ideation", and "a relative lack of any insight into her difficulties".

[10] Admittedly, however, he has seen L.B. at his office on only three occasions, and spoken to her spouse once by phone, since 2007. All consultations were in regard to her mental health.

[11] Blackadar learned of the agency's most recent intervention from S.B. and said he was informed by the husband that she was not a significant risk to him or herself, that things were likely improving, and that he was "hoping to get reports from her attending psychiatrist for further guidance around management issues". According to Blackadar, shortly thereafter she re-presented to the office with "really escalating paranoia, concerns regarding S.B. and potential fidelity concerns" which seemed quite delusional and which were very disturbing to her. She was quite agitated and S.B. was quite concerned. An involuntary hospital admission followed during which he observed her to still have very little insight as to the difficulties that she was experiencing. Although less agitated, she still expressed difficulties around paranoid ideation and continued to have persistent delusional thoughts. Her medications were reportedly adjusted. This stabilized her agitation but did not help with the underlying disorder which has been persistent over time. She was released.

[12] When seen by him in late 2007, she disclosed she had been having regular follow up with her psychiatrist. However, Blackadar did not receive copies of any psychiatric or other mental health reports. (He was not surprised at this.) And, Blackadar did not request any reports or records from others for his file.

[13] Blackadar learned of the court proceedings and that L.B.'s parenting capacity and/or ability would be an issue. By then, there was a bit better eye contact, L.B.'s speech was more clear, there was less evidence of delusional thinking, she was less agitated, and she had "a little insight" into her difficulties. He characterized the changes as positive, but stressed that the underlying mental health problems are "still dominant and present".

[14] It was noted that although L.B. has a medical disorder there has been some debate among the assessing psychiatrists as to her exact diagnosis. He observed that bipolar disorder, where she experiences periods of mania, has been the most consistent diagnosis.

[15] In summary, from Blackadar's perspective as a general practitioner, L.B. frequently presents with agitation, an inability to process reality and deal with current and real life problems, and a tendency to have delusional thoughts and issues which have involved her children and involved her relationships in the sense that she tends to have false and very fixed beliefs which are out of the ordinary and not representative of the reality that she is in at the time. He added that she has always been extremely suspicious and paranoid of medical professionals. He noted that her medications have been most recently managed by her psychiatrist.

[16] Asked about L.B.'s relationship with her spouse, Blackadar said L.B. is extremely dependent on him and will always defer to him, if a question is asked, to answer it. Physically, she always presents extremely close to her husband. Generally, she is very reliant on him.

Dr. Susan Hastey, assessor

[17] Dr. Susan Hastey (Hastey) is a veteran consultant who was qualified to give expert opinion evidence regarding parenting capacity, custody and access issues, and individual and family counselling. Her Curriculum Vitae appears as Exhibit 3.

[18] Starting in late January, 2007, a series of interim reports were prepared and submitted by Hastey and which culminated in a full Parenting Capacity Assessment Report in late November, 2007 (Exhibit 2).

[19] Hastey's experience with the family dates back to 1999 and, accordingly, she is quite familiar with the parents and their evolving circumstances. In the Background Information introduction to her final report, Hastey recounts L.B.'s past mental health history and present mental health issues. She touches on the events leading to the agency's prior interventions and the taking of two other of the couple's children into care.

[20] Hastey gleaned her background information from interviews, assessments and observations as well as the extensive agency file materials and professional reports which have accumulated over the years. It is unnecessary to recapitulate their contents.

[21] Following commencement of the current proceedings, Hastey learned of the involvement of psychiatrist Dr. Simon Brooks and pending changes in L.B.'s medication regime. By the time of her final report, Hastey was satisfied that a substantial period of time had been allowed for treatment to stabilize and for any prescribed medication to have full effect. Throughout the proceedings, Hastey encouraged L.B. to have individual or solo contact with D.B.. She commended agency workers and S.B. for encouraging appropriate interaction between mother and son; and she noted that S.B.'s parenting has provided an appropriate model to his spouse in regard to parent-child interaction, parent-child boundaries and parent nurturing. That said, as of late 2007, it was Hastey's opinion that L.B.'s behaviour during access was "indicative of a parent who is having many difficulties in addressing the individual needs of her child".

Assessment of S.B.

[22] Hastey's assessment results in regard to S.B. start at page 9 of her final report. I do not propose to review all of the test results but note that S.B. presented as an articulate and intelligent individual, albeit one who has a tendency to present himself in an "overly virtuous light".

[23] Hastey opined that S.B. holds appropriate attitudes towards children in general and that he views his relationship with his son as a primary force in his life, in

particular. Hastey endorsed S.B.'s belief that he has taught his son good decision making, helped him develop a conscience, and viewed him with an ability to empathize with other individuals.

[24] Significantly, Hastey noted (at page 16) that S.B. perceived significant improvement in his wife's interactions during access visits. However, neither Hastey (nor other observers) agree with his estimation of the extent or degree of change.

[25] Hastey also emphasized her opinion that S.B. minimizes the extent to which the family's interaction with individuals <u>outside</u> of the family environment has significantly decreased over the past 12 to 24 months. Hastey noted that L.B. does not like other individuals in the home and that she told Hastey that she frequently asks anyone that drops in to leave and to not come back. Hastey connects this, in part, to L.B.'s general mental health state, but also to her obsessive-compulsive behaviour and her obsession with her relationship with her husband. According to Hastey, L.B. continues to be threatened and to respond with anxiety and general paranoia toward other individuals attempting to come into the family environment or to interact with her husband. In Hastey's opinion, these attitudes and general behaviours would negatively affect the child if he were to return to the family home.

[26] In the same vein, Hastey expressed concern about S.B.'s perception and presentation of support networks outside the home. She wrote as follows:

> While there is a broad general interest in the family regarding outside interests and topics, this Assessor is concerned that the support network for S.B. and L.B. is very limited. While L.B. still communicates with her parents, her relationship, particularly with her mother, A.D., can be volatile and unpredictable L.B. has stated that she has told her mother that she has, in fact, come to take responsibility for making false allegations against her step-brother when they were both teenagers. A.D. remains upset about the problems this has caused in her family, and the problems that it subsequently caused her son. This matter was before the Court and the individual in question was found guilty. This maternal grandmother and grandfather have a great deal of love for their grandson, D.B.. A.D. remains quite angry towards both S.B. and L.B. in regard to their third grandchild, G.B., being placed in the Permanent Care and Custody of the Applicant Agency. It will take a significant amount of time to resolve some of the emotions and issues in this Family of Origin.

> This Assessor is concerned that the only individuals L.B. and S.B. seem to be able to turn to in an emergency are, in fact the Ds. It is unlikely that this relationship will improve quickly, and there does appear to be a general lessening of the time that L.B. spends with her mother, A.D., and a lessening of the time that A.D. spends in the B. home. Apart from the professional contacts and some Church contacts, there appears to be little development of a broader level of community support made by S.B. L.B. has difficulty accepting and attending counselling through Mental Health Services. She tends to go to counselling only under direction, and when in crisis. This has not allowed for a broad level of support to be forthcoming from the local Mental Health Services. L.B. has become unsettled in some counselling environments, and is rigid in regard to information that is requested of her in order for the therapeutic relationship to be deepened. She has informed this Assessor that she attends only because she is told she must attend, and other people believe it is good for her. She does not believe that she herself is improving due to the counselling she receives through Mental Health Services.

Assessment of L.B.

[27] Hastey was unable to conduct traditional objective testing and assessment of L.B. because of her mental health condition. However, based on her observations and experience with L.B. and the family, Hastey identified a long list of concerns and reinforced them in her testimony. I have summarized them below. In Hastey's opinion these would place D.B. at risk if he is returned to the day-to-day care of his parents:

- She is incapable of parenting on a one-to-one basis. She continues to have problems with communication, impulse control and boundary formation.
- There have been some improvements in L.B.'s mental health condition, but many of the dynamics in her relationship and interaction with her spouse continue to be problematic.
- She has disclosed limited tolerance for interaction with D.B..
- She has little insight or understanding into her mental health issues.
- She does not have the ability to differentiate herself and her own needs from those of her son and her family.

- She continues to be overwhelmed with anxiety and fears and presents with an inappropriate affect which may be detrimental to parenting and may lead to dysfunction in the child.
- She is intolerant to the presence of other individuals, apart from her spouse, in the home environment. She has little ability to make her own choices and decisions and has limited ability in regard to social contact and activities outside the home and her relationship with her spouse.
- She has weak communication with and interaction with her son even during access visits.
- She is unable to state and may not understand her son's social, emotional and physical needs and is largely out-of-touch with her son's developmental history, his schooling and friends, and general well-being.
- She holds unreasonable expectations for D.B. having regard to his age. There is concern that she, in the past, may have isolated the child physically within the home and may have engaged in corporal punishment.
- Her communication skills and patterns still exhibit significant levels of dysfunction including difficulty listening and focusing on questions, or responding to routine questions.
- She is neither physically nor emotionally available to her son. She is unlikely to be able to set or to encourage appropriate routines for her son in the absence of her spouse.
- She is unlikely to be able to respond in a timely manner, or in an appropriate manner to physical or general emergencies affecting D.B. or herself.
- Her overall mental health status precludes either co-parenting or individually parenting D.B..
- She continues to be obsessed with her spouse. She has questionable ability to share schedules and responsibilities within the home without her spouse. She is unlikely to be able to share in a cohesive discipline or parenting plan with her spouse, in her spouse's absence. Manipulation and obstruction by L.B. within the household is likely should the child be returned to the care of the parents.

[28] Hastey reviewed L.B.'s family and social history over the space of approximately four pages in her final report. It is unnecessary to restate the history as it went largely unchallenged in any event. At the age of 15, L.B. disclosed that she had been sexually abused by an adoptive sibling who was later charged with and convicted of the abuse. Reportedly, L.B. was involved in the related court processes and, as a consequence, numerous family problems followed. In particular, L.B.'s disclosures led to many harsh feelings between herself and her parents and she was eventually placed in the permanent care and custody of the agency, by consent. Little is known about L.B.'s birth parents except for L.B.'s disclosure that her birth mother may have been diagnosed with bipolar disorder and possibly experienced other mental health conditions.

[29] Hastey noted that L.B. has limited formal education (i.e. Grade 11 High School). When the mental health issues surfaced L.B. was diagnosed with post traumatic stress disorder with symptoms of depression as well as anorexia. Over the space of two or three years there were several hospital admissions and treatment programs. Also noted in those years was suicidal ideation and a subsequent diagnosis of bipolar disorder with manic episodes (1997). Following the order for permanent care and custody, L.B. lived in four separate foster homes, attempted suicide, and had numerous psychiatric admissions. To say that L.B. has always presented as "frail and emotionally needy" is certainly an understatement.

[30] L.B. was adopted by the D.s. Significantly, for our purposes, Hastey reported that to this day L.B. experiences feelings of abandonment and rejection and the relationship between herself and the D.s is volatile. So for example, while at times her mother, A.D., can be quite supportive, particularly in regard to D.B., at other times she is perceived to be undermining L.B. and S.B..

[31] Hastey shares the opinion of other professionals that none of L.B.'s diagnoses have been "successfully" treated. Also, significantly, Hastey adopts the observations of others that there is a history of non-compliance with treatment, self-medication, refusal of services, and a general and significant lack of insight on L.B.'s part.

[32] L.B. and S.B. met when L.B. was about 16 years of age and they formalized a common-law relationship when L.B.'s wardship was terminated in May, 1996. L.B.'s mental health history thereafter is set forth by Hastey at pages 21 and 22 of her final report.

[33] On the issue of L.B.'s inability or unwillingness to follow through with services, Hastey elaborated in testimony that she spoke to L.B. in the early summer of 2007 when she was not attending appointments. Hastey said she stressed the importance of doing so. However, L.B. said she felt uncomfortable in counselling, that they were still going over her childhood issues, and that she did not need that anymore. She claimed L.B. told her she was <u>not</u> encouraged by S.B. to attend the counselling if she did not want to. Hastey also spoke to Donna Murphy, Jan Porter, and Jane Schnare, all of whom worked with the family and with L.B. individually. According to Hastey, they had uniformly also concluded that L.B. was not always encouraged by S.B. to keep her appointments and that her level of neediness was being reinforced within the marriage.

Assessment of D.B.

[34] D.B. was assessed through interviews, objective assessment and observations by Hastey. Other than for a visible facial tic that seemed to be exacerbated by stress and for some tendency to be fidgety, D.B. otherwise presented as a bright and friendly boy. He was assessed to be of average intelligence and he was described as an articulate child who was able to express his ideas well for his age.

[35] Importantly, D.B. presented to Hastey as a six year old child who has significant fear of his mother to the extent that he has developed his own plan for removing himself from the family home if he is left alone with her and if she should become physically aggressive with him. He reportedly has a good memory for the incident which triggered the agency's involvement and his taking into care. D.B. also disclosed to Hastey some incidents in which he claimed to have observed physical interaction between his parents which have included attempts by his father to control the mother's behaviour and also attempts by L.B. to interpose herself between father and son to maintain focus on herself.

[36] D.B. also disclosed a strong bond with his maternal grandparents and his successful adjustment to another foster home placement.

Assessment Conclusions and Recommendations

[37] With respect, I have disregarded a final recommendation for permanent care and custody. Such was inappropriate because it is outside the scope of her

court-authorized retainer and her expertise. The outcome is a mixed question of law and facts. I am mindful that Hastey is an agency witness but she, and any other assessor, should not be recommending what the court should or should not be doing.

[38] Hastey's other conclusions and recommendations were succinct and they are reproduced below:

> The [above] deficiencies in regard to both S.B. and L.B.'s parenting abilities preclude their parenting their child on a day-to-day basis. This Assessor believes that L.B. is not capable of parenting her son D.B. on a one-to-one basis at all. She has, in this Assessor's opinion, continued difficulty in the above areas noted. L.B. also has difficulties in communication in general, impulse control, and certainly major deficits in the appropriate setting and maintaining of adult to adult boundaries and adult-to-child boundaries.
>
> While some improvements have been noted in L.B.'s mental health condition and her response latency has improved significantly, allowing her to complete some further objective assessment; L.B. is not able to complete a full assessment at this time. This Assessor believes that her condition may require a differential diagnosis, and therefore considerably more time may be needed in regard to such a differential diagnosis being made, and any subsequent changes in medication, and response to medication time, may all require significant amounts of time.
>
> Dynamics between S.B. and L.B., as well as the dynamics of interaction between L.B. and her son D.B., remain problematic. The above issues noted in regard to observation of L.B.'s parenting abilities, and her general level of adaptive functioning indicate that both her physical and verbal interaction with her husband and her son, remain problematic.
>
> At the time of the last interview and assessment with L.B. in October, 2007, L.B. was only tolerating approximately 10 minutes of one-to-one interaction with her son D.B. L.B. further stated to this Assessor that she did not wish to extend the time duration of her individual access visits with her son D.B.. At the same time she clearly stated to this Assessor that she believed she could parent D.B. on her own, if S.B. was necessarily absent from the home due to work or community activities. This is not a realistic perception of her abilities on the part of L.B., and it certainly is not a realistic perception of her parenting abilities nor of the social, emotional and physical needs of their son D.B., on the part of either S.B. or L.B.

> This Assessor is concerned in regard to the lack of education that has taken place on the part of S.B. and L.B., pertaining to her general mental health condition. Assessment results and interviews indicate that neither S.B. or L.B. have acquired any significant understanding of L.B.'s mental health issues. They are unable to even provide this Assessor with specific names of prescribed medication and any side effects, or the general need that is addressed by these medications. S.B. reports to this Assessor that he spends a significant amount of time on the Internet. This should have allowed him the opportunity to view literature on these mental health issues, as well as on the numerous medications L.B. is prescribed. Education in such areas is very important for family members , and is the cornerstone upon which to become proactive in regard to family mental health, and the general mental health needs of all family members. L.B. continues to refuse counselling services, and this Assessor believes, as does L.B.'s Therapist Donna Murphy, that this refusal is reinforced by S.B.
>
> I believe that the bond between S.B. and D.B. is very strong. There is a positive attachment evident between father and son, and S.B. is the primary attachment figure for his son D.B. I believe this positive level of attachment would continue to be of benefit to D.B., and will continue to benefit him in the future. D.B.'s Mental Health Therapist, Jane Schnare, and his current Foster Parents have also made observations to this Assessor, in recent interviews, indicating that they also believe that D.B. should have the continued presence of his father in his life. This Assessor does understand that this does present some issues in regard to the long term placement of this child, but it is strongly believed that access between father and son should continue.

[39] When questioned about the possibility of individuals potentially coming into the home and assisting S.B. if D.B. is returned, Hastey testified:

> ... L.B. clearly informed me that she still in October [2007]did not like people coming into the home. She still did not want even people visiting, that when they did visit she would ask them to leave ... If S.B. was not there she'd ask them to not come back. It's very difficult to have ongoing social relationships with individuals when you don't want them in your home. Her reception to service providers coming into the home was also not positive throughout the course of this assessment. And she verbalized her lack of comfort with individuals even in the access environment, that it made her feel very uncomfortable. She was jealous of an access transporter who was a young female and responded very negatively and aggressively to the presence of this young woman and the agency when S.B. and D.B. were present - I believe that was in September of 2007. So it's very difficult to broaden your level of

> particularly social support and friends when you have an ongoing, apparent presentation of hostility and dislike of individuals who she believes are competing for S.B.'s attention.

[40] As it happens, the parents did not give Hastey the names etc. of potential helpers so that they were contacted as collateral sources. (The only exception were the D.s who were not new references.) She also reinforced her concern that S.B. could not always specify L.B.'s current medications and dosages in circumstances where L.B. was effectively "self-medicating":

> ... And then there was during the course of the assessment, a change in medication; and I asked once again what the new medication was. I was concerned that there had been information given to me that L.B. was taking diet pills. L.B. did confirm to me that she had taken some diet medication as well and was not aware of what could be contained in that medication. I was concerned, reported that to the agency, because that's often a medication that's bought through the mail or over the counter; but in certain amounts, it certainly can be a stimulant that could interact orally with other, other medication.

[41] Hastey was asked directly why returning D.B. to the home of S.B. and L.B. would place D.B. at risk. She answered as follows:

> I don't believe that L.B. at this point in time can be emotionally and physically available for her child. Now Stephen says in this most recent affidavit that he would see that D.B. was never left absolutely alone with his mother. I believe that's almost an impossible task unless you have a 24 hour care-giver or assistant in the home and even then, ah, given the circumstances of this case, that would be very, very difficult for L.B., if not impossible, to have somebody sharing her home with her apart from S.B. and D.B..
>
> And, I believe that children learn their social and emotional behaviours and their response to emotions and their breadth of emotions primarily through vicarious observation of other family members and their peers.
>
> This is a very worrisome situation when you have a serious mental health presentation in a home - not that mental health doesn't exist, you know, but independently of that, but we have to take into consideration the age of the child, the amount of learning - particularly in regard to emotional and social

development - that will be taking place over the next several years, and how observation of that in a person who is presenting very little of it, observation of proactive and altruistic behaviour, sharing behaviour, caring behaviour that is absent in this parent due to mental health issues, not due to her lack of desire to be a good parent, will hinder D.B.'s development.

And while he has S.B. to observe as a parent (that's also perceived as the male model of adult behaviour) whether there could be an appropriate female model in the home apart from L.B. that would/could promote and reinforce appropriate social and emotional development is very questionable.

And I don't believe that L.B. can provide the model that would be appropriate for that child to learn that area of development. I do believe if she was left at this point in time caring for the child alone, that the child would be at physical risk. I don't believe she can respond quickly enough to a situation. I don't believe she could identify safety issues that might be life threatening quickly enough and respond with alternative measures quickly enough to prevent significant risk.

[42] Hastey testified that she recommended to the agency that if permanent care and custody is awarded that there should be exceptional and continuing contact with the parents:

Yes, it's unusual. I've had a lengthy interview with the foster parents. They seem very devoted to D.B., certainly can identify his needs and offered the access to take place in their home, I believe of their own volution without pressure from the agency. It has worked out well - certainly in D.B.'s best interests and I think D.B. is beginning to present with a broader emotional understanding. D.B. was a child who was not given to emotional outbursts and was holding, I think, a lot of fear and anxiety over the home situation and I believe he's beginning to express some of that. He has moved closer to and has become more open to a relationship with the foster mother which was quite limited at first, given, I suspect, his growing fear of a mother figure and that is being addressed in a very appropriate and supportive manner by the foster mother. Her ability to work with the natural parents, I think is very positive for everybody concerned. I've had an opportunity to interview Jan Cressman. I think she agrees that access between the family and D.B. is best at this time and is in D.B.'s best interests.

[43] Later she stated:

> And so it is unlikely in my view that her mental health situation is going to improve to the point where parenting of the child could be normalized - the things that we look for in any case in regard to day-to-day parenting and care of a child that could be observed and be present on a consistent and routine basis in the person of L.B.. So, in the absence of that, I believe that this fostering situation with ongoing access to the parents and possible adoption for D.B. could be very positive for him. In the old days, before we decided we had to adopt a lot, as is the case in the last few years, a long term placement, a permanent care and long term placement of the child, given that there were mental health issues access would be ongoing, would not be that unusual a case and it would have been deemed ... I was involved in many such cases in the past 16 years; in the past five years that's not usually something that the Department wants to see happen. It doesn't mean I don't recommend it but that in this case, I think, is workable, it's doable, it's happening. And I think D.B. is benefitting greatly by it from what I can hear and read.

Yves Bouchard, child protection worker

[44] Yves Bouchard (Bouchard) is the lead case worker for the agency. His January 30, 2007 affidavit (Exhibit 15) has been before the court for many months. In it, Bouchard touches on the apprehension of the couple's three children and incorporates, by reference, a comprehensive affidavit dating back to early November, 2006 when the child, G.B., was the subject of child protection proceedings. At that time, D.B. was also of concern and Bouchard pointed out that S.B. informed the agency that he was prepared to assume full parenting responsibility for D.B., if necessary. After that, Bouchard formed a belief that L.B.'s mental health had worsened, rather than improved. Bouchard noted the difficulties in obtaining a full Parental Capacity Assessment of L.B. because of her health.

[45] In Exhibit 15, Bouchard recounted his version of an incident of domestic violence on January 26, 2007, perpetrated by L.B.. The incident occurred in a public place in the presence of D.B.. In the immediate aftermath of the incident, Bouchard was also concerned that S.B., contrary to his directions, left the child alone with his mother while the child protection investigation was ongoing. Bouchard was able to substantiate the particulars of the assault from S.B. who attributed his wife's conduct to a recent change in her medications. Based on an interview with D.B. at the time, Bouchard also expressed concern about the possibility that the child had been

coached by his father to not discuss recent events, or, at least, to minimize them. S.B. gave a video-taped statement to the local police, the substance of which is set forth in Bouchard's January 30, 2007 affidavit.

[46] Exhibit 11 is Bouchard's August 31, 2007 affidavit which provides some brief additional information regarding events in the aftermath of D.B.'s apprehension. Access by both parents was arranged, albeit it under supervision. Copies of the access facilitator's reports are in evidence by agreement. A brief report was received from psychiatrist, Dr. Simon Brooks, on March 22, 2007 at which time L.B. was described as quite unstable. Dr. Brooks had written that "she continues to display jealously of virtually pathological dimensions and continues to exhibit a very high libido which is almost certainly secondary to this jealousy". He confirmed that a diagnosis of bipolar disorder was likely, but incomplete. And, in summary, he said she remains "acutely ill". In a brief postscript on March 29th, Dr. Brooks noted that L.B. was "much better and appears to be heading towards some stability". By the end of August, 2007 the agency was contemplating a disposition by which the child would remain in temporary care and custody with supports and services as recommended by the various professionals.

[47] In his testimony, Bouchard acknowledged that after D.B.'s apprehension, he only observed access between D.B. and his parents at the agency office and has not observed access at the foster placements. Accordingly, he has relied on reports provided to him by access facilitators.

[48] Bouchard endorsed the agency's Plan of Care on February 13, 2008. In setting forth the explanation as to why D.B. can not be adequately protected while in the care of his parents [Exhibit 16, paragraph 3)], the agency has clearly placed a lot of weight on the findings and recommendations of Susan Hastey. Hastey was quoted at length in the Plan of Care.

[49] Bouchard wrote that it is the agency's opinion that D.B. has suffered emotionally and that he has had his emotional and social development impaired by his mother's mental health issues and by his father's inability to protect him. It is noted that D.B. has been diagnosed, at least preliminarily, with an adjustment disorder by social worker Jane Schnare and that the current foster parents have observed some behaviours which could be linked to his past experiences.

[50] Insofar as S.B. is concerned, the worker and the agency believe that he has been unable to protect his son from the emotional impact of his spouse's mental health conditions, to protect him from identified concerns and to provide adequate supervision. Bouchard's belief is that the father has continuously minimized his spouse's mental health condition and the impact on his son. While acknowledging that the husband has been consistent in trying to include his wife in interactions with the child, Bouchard is of the view that he has also consistently made excuses for his spouse's inability to maintain a significant relationship with her son. Bouchard conceded the unquestioned love of D.B. for his spouse and son, but he believes that S.B. has been unwilling or is unable to protect his son from the full effects of his wife's mental health issues.

[51] Importantly, until recently S.B. was unemployed and therefore at home with L.B. Now that S.B. is employed full-time, Bouchard knows that S.B.'s plan is to hire care-givers to assist L.B. and D.B. if the child is repatriated. However, according to Bouchard, it is unclear how this will play out because of the husband's shift work. Moreover, according to Bouchard, it is unclear as to whether L.B. would permit such a development. Also unanswered, from the agency's perspective, is the question as to how such a scheme will potentially impact on the child.

[52] According to Bouchard, since February, 2007, there have been frequent contacts with L.B. regarding the importance of engaging in and following through with mental health appointments. The agency has been prepared to provide transportation but takes the position that it is up to the parents to make and keep the appointments. According to Bouchard, he repeatedly stressed to S.B. the importance of his spouse keeping appointments and gave examples.

[53] Insofar as access is concerned, Bouchard's understanding is that S.B. gets his schedule each Sunday for the following work week. S.B. has been asked to work directly with access facilitators to sort out the visits depending on his work schedule and the foster family's commitments and schedules.

[54] Since February 20, 2008 Bouchard admits that he has had minimal contact with S.B. except for court appearances. And, he emphasized that S.B. has given the agency very little information regarding potential child care providers except as disclosed in a very recent affidavit.

[55] Bouchard said that the agency's Plan for permanent care and custody remains unchanged. By allowing contact with the child, following a permanent care and custody order, Bouchard believes that the "best of both worlds" may be achieved. According to Bouchard, D.B. certainly faces a dilemma. The child is very anxious about his mother's long term future; and he very much wants to be with his father. However, he is well-settled with the foster family, and well-bonded to them and to the community.

[56] Bouchard conceded that there have been some positive recent changes in L.B.'s presentation although she is still very anxious and stressed. For example, she is able to verbalize directly more with him than in the past and her general stress level appears to be somewhat less. Reportedly, she has also been able to spend more time at home alone when S.B. is at work - although she would prefer otherwise. Bouchard believes she is trying to cope the best way she can.

[57] Bouchard added that the agency offered L.B. transportation for access visits on occasions when S.B. has been at work but she has declined on several occasions. That is, she has declined extra access over and above joint access with her spouse.

[58] Bouchard reiterated the agency's concerns if D.B. is repatriated to the joint care of his parents. There is the overriding concern about the state of L.B.'s mental health and the potential risk to D.B.'s emotional health in a home setting which has had few significant changes since the proceedings started. The spousal relationship is also still perceived to be dysfunctional. S.B.'s ability to support and protect his son in priority to his wife's interests is still questionable. And, in a related vein, there is considerable distrust from the agency's perspective that S.B. would contact the agency if and when problems did surface within the home. In that sense, there is a perceived risk of physical harm to the child which, in the past, has been spurred by jealousy and led to domestic violence.

[59] In cross-examination, Bouchard admitted that his last personal visit to the B. household was over a year ago and that he had no concerns about the physical arrangements. He acknowledged that S.B. was in a position to provide care and supervision in that he had accepted and cooperated with all services offered directly to him. Of course, L.B.'s progress during this period was such, from the agency's perspective, that repatriation was inappropriate.

[60] Bouchard also confirmed in testimony that since D.B. was taken into care, there have been no other reported incidents of domestic violence as between the parents. He also agreed that L.B. was capable of providing for her son's basic physical care but that it was the other important aspects of parenting that she has had deficiencies in and continues to do so.

[61] Bouchard stated that Dr. Brooks was incorrect when he testified that he had no input into the agency's Plan of Care. According to Bouchard, Dr. Brooks attended at least one case conference and that there were at least two other brief conversations about the matter.

[62] The theoretical scenario in which S.B. would parent his son in the absence of L.B. is not considered viable and is perceived by Bouchard and his colleagues to be potentially devastating to the mother.

[63] In considering Bouchard's evidence as a whole, and at the risk of overstatement, I find that Bouchard's rationale for the agency's position is deeply rooted in Dr. Hastey's findings, conclusions and recommendations. His testimony and the agency's Plan echo her work and are bereft of much original thought on the submission by the guardian, for example, that there may not have been consistent, effective advocacy for L.B. to ensure that she takes advantage of agency-offered or sponsored supports and services.

J.F., foster parent

[64] J.F. lives in a rural community with her spouse. Both are employed. They have over ten years experience as foster parents.

[65] D.B. is the only child currently living with them. He joined them in June, 2007. When first met, he was described as a normal little boy who is kind and well-rounded. He was somewhat nervous and anxious, at first. He had no major issues. Over the summer months, he became more secure in his placement.

[66] The birth family was met shortly after he came to live with the foster parents and they have maintained contact. She said they developed a relationship with D.B.'s parents "because they mean so much to him". They decided that it would be "an open situation". Visits started and have continued throughout the proceedings. They have occurred at the agency's office, at the grandparents' home, and at the foster

residence. The arrangements have been informal but quite effective. She exemplified a typical visit. The child is given time and privacy with his birth-parents. Every effort is made to make the visits as normal as possible.

[67] D.B. loves having visits and is happy when his parents are there. There is reportedly little interaction between mother and son but lots between father and son. There are no identified concerns surrounding access and every reason to believe the child derives benefit.

Tina Peddle, adoption worker

[68] Tina Peddle (Peddle) is a social worker employed by the agency as an adoption worker. She is responsible for the location of appropriate adoptive homes for children placed in the agency's permanent care and custody. Peddle's affidavit appears as Exhibit 14.

[69] Relying on information provided by the agency's lead worker (Bouchard), Peddle's understanding is that D.B. has special emotional needs and that he has a significant attachment with his father. According to Peddle, these special needs will require special consideration if and when locating an appropriate adoptive placement.

[70] Peddle said the current foster parents have expressed a desire to go through the adoption process - if D.B. becomes available for adoption. The foster parents were approved as a foster family in March, 2006 after fostering for approximately 6 years elsewhere. D.B. was placed with them, and, according to Peddle, they have not only fostered and facilitated contact with D.B.'s birth family but have supervised access between D.B. and the respondents in their own residence.

[71] Peddle described the agency's Plan as "unusual" in the sense that the agency's intention is to place D.B. in an adoptive home which promotes and facilitates birth family contact including, in this instance, direct access with his father, S.B., and indirectly with his mother, L.B., for as long as it is in the child's best interests. With over 11 months of experience with these foster parents, the agency characterizes them as "the cornerstone" of their Plan. If for some unforseen reason the current foster parents are not approved as an adoptive family (an adoption assessment has not been done), then the agency would seek out another adoptive family who would be willing to support birth family contact.

[72] According to Peddle, children are placed through various methods within the Province. At paragraphs 10 and 11 of her affidavit she elaborates on the methodology.She said the Department of Community Services records indicate that there were 152 adoptive families approved to adopt within the Province as at the end of March, 2008. Of these, 35 were families looking for adopting children over the age of five years in either sex category. According to Peddle, the agency will seek to find an appropriate match having regard to the special circumstances of this case.

[73] Peddle also made reference to section 78A of the **Children and Family Services Act** and the provision for “Openness Agreements”. She stated this recent amendment means an agreement for the purpose of facilitating communication with or maintaining a relationship between adoptive parents and birth relatives. Peddle wrote that Openness Agreements are not legally binding, however, and they have no effect on the legal status of an adoption order. From the agency perspective, openness in adoption can be seen as a continuum from the sharing of non-identifying information to direct contact.

[74] In testimony, Peddle admitted that there is not complete certainty that the current foster parents will be approved and also acknowledged that should there be an adoption, that the adopting parents would be within their rights to cut off contact with the birth parents. Peddle also stated that there is no reason for L.B. not to have access visits as contemplated for her husband, so long as her contact is supervised.

Jan Cressman, counsellor

[75] Jan Cressman (Cressman) provides a number of professional services including counselling for youth and families and as a *guardian ad litem*. As appears from her written report in late April, 2008 (Exhibit 7), D.B. was referred to her for counselling. Incidental to that service, she has met with the current foster parents several times and has been impressed with them and their willingness and ability to work with the B. family.

[76] She described the communication between the foster parents and D.B.’s father as very clear and positive. She said that D.B. is receiving positive supports from his foster parents and, at the same time, his birth parents are included in his life in a “normalizing” manner.

[77] Cressman described the father/son as constant and playful and stated that S.B. clearly loves his son. By contrast, she said the relationship between D.B. and his mother appears distant and more of a "careful watching". She also noted D.B.'s attempts and initiatives to engage his mother in activities.

[78] Cressman is aware of the father's demanding employment schedule. Because of his work responsibilities and the issues surrounding his wife, she is concerned about whether S.B. would be able to offer D.B. the support and attention that he requires. Cressman characterized D.B. as a wonderful, inquisitive little boy who is full of energy and who requires ongoing interaction.

[79] Because he is periodically anxious, she said D.B. requires a predictable home life that includes a bedtime routine and a daily schedule that works with his energy.

[80] So far, Cressman has not proceeded with intense therapy. Instead, she has been working to establish trust and rapport, and strives to ensure that the child knows he has a team of support that includes his parents as well as the foster parents.

[81] Although not qualified to give expert opinion evidence, Cressman volunteered her opinion that it is very important for D.B. to have the issue of placement decided. According to her, he has expressed worry and concern about where he will be in the future. She underlined, however, that he has a "steady, clear loyalty to his parents". She said this exemplifies his sense of diplomacy as well as obvious attachment.

[82] Cressman had a chance to observe D.B. with his birth parents and with his foster parents on the same day in late April, 2008. According to her, the child has a comfort and relaxation with his foster parents that she did not observe with his birth parents.

[83] In testimony, she described D.B. as being like a "Master of Ceremonies", or a "host" to his parents instead of a little boy. She sensed some fear as between mother and son, going in both directions, but suggested that D.B. is very diplomatic and has responded appropriately to his mother's circumstances.

[84] Cressman expects therapy to continue and eventually will deal in a more concrete fashion with issues that may be causing him anxiety. However, to work on those issues, she said it is very important for him to have a clear understanding about

where he is going to live and how his relationship with his parents will ultimately look.

[85] Cressman reiterated in testimony that she is "at the beginning" of her role and that she foresees long term involvement including weekly appointments subject to the child's commitments and schedule.

[86] Just prior to the hearing, Cressman met privately with D.B. to reassure him about her helping role and she took the opportunity to question him about continuing contact with his birth parents. According to her, D.B. reaffirmed his wishes. Also noted was the fact that although the child has had regular contact with the grandmother, D.B. seemed indifferent about continuance of this.

[87] Cressman has been careful not to discuss the legal proceedings with D.B. although she thinks that he is aware that there is "something in the air". The foster parents have reported some confusion on D.B.'s part about his future. He is clearly torn between living with his father, in particular, and remaining with his foster parents for whom he also has obvious affection.

Julie Nickerson

[88] Julie Nickerson (Nickerson) is a veteran social worker who has worked extensively with the family as an access/family support worker. Her detailed observation reports were entered through the Affidavit of Yves Bouchard (Exhibit 11, Tab A) and through Exhibit 10. Her reports span the time frame of late May, 2007 until mid April, 2008. It is impractical and unnecessary to canvass the minutiae of her reports but they have been considered and weighed for decision purposes. Nickerson's reports have been routinely filed with the agency and shared with other service providers, as need be.

[89] Nickerson's observations of L.B.'s interaction with her son in various settings is consistent with those of most other observers. Interestingly, when access has occurred most recently at the foster parent's residence, D.B. was not troubled by Nickerson's involvement and, to Nickerson's observation, appeared spontaneous, comfortable and natural in his own conduct.

[90] According to Nickerson, D.B. and his father continue to be the main actors during parental access and L.B. tends to remain an observer unless encouraged.

[91] Nickerson has carefully tried to facilitate more interaction between mother and son while being careful to ensure that the mother has been as comfortable as possible. Nickerson believes that the mother is quite relaxed when access occurs at the foster placement but she stressed that the main interaction continues to be between father and son. She allowed that the mother is "minimally more affectionate" now than in the past.

[92] In assessing Nickerson's evidence, it is important to remember that she was hired as an observer and that normally she would not be expected to intervene unless absolutely necessary. Furthermore, she is not involved with routine matters such as scheduling.

[93] As far as S.B. is concerned, he has always been present during L.B. access visits and there are no concerns for D.B.'s care or safety while the father is present.

[94] Nickerson does not supervise and is not otherwise involved with D.B.'s access with his grandmother, A.D.. However, she keeps in touch with the grandmother and has provided reports of her conversations with A.D. For example, as recent as early March, 2008, Nickerson was receiving reports from the grandmother that most of the interaction at her home was between father and son and that L.B. was participating only when the father told her to do so. Also in early March, 2008, A.D. was reportedly told by the mother that she could not parent D.B. alone but, on the other hand, L.B. also reportedly said that she did not want a "babysitter" looking after her when she was alone with D.B. (i.e. when S.B. is at work).

[95] Also apparent from the most recent reports of Nickerson, are difficulties surrounding access scheduling particularly in the wake of S.B.'s employment schedule.

[96] Asked to describe the relationship of the foster parents with the birth parents, she stated:

> For me it's been the most unique situation I have ever experienced with a set of foster parents in their relationship with them. I have never worked with another set of foster parents who have been as, as open, opening their home to, to the parents, welcoming them into their home, trying to make them feel welcome and comfortable.

> I've been very impressed with the F.s' care and consideration that they have shown for S.B. and L.B. Over Christmas, there was a spell there where S.B. and L.B. weren't well, weren't feeling well. We were all sick and they helped D.B. to make a 'care basket' for them; and D.B. picked out the things that were to go in it; and they sent that home with them. And, J.F. has sent home meals for them. When we leave she'll have a casserole for them and say, you know, this is for you, you take this home. I've never experienced a foster home like these, like these two. It, they're amazing. I think they really care about S.B. and L.B..

Jan Porter, mental health worker

[97] Jan Porter (Porter) is a community support services worker with the South Shore Health Mental Health Program. Porter has worked with L.B. on issues surrounding her health, particularly in regard to weight gain resulting from psychiatric medication. Porter and L.B. have also discussed broad mental illness topics, including bipolar disorder in particular. She elaborated that most of her discussions with L.B. centered on "recovery" and broader issues of a healthy lifestyle, management of medications, building supports, accessing therapy, etc. Porter also stated that S.B. was usually at the residence when they met there but she had no more than social contact with him.

[98] Porter filed a written report dated January 9, 2008 (Exhibit 6) summarizing the various appointments and the matters discussed.

[99] In mid December, 2007, L.B. expressed some ambivalence about continuing with Porter's services. When Porter and L.B. met on January 8, 2008 it was thought that regular contact would resume. However, since then, there has been no contact, except by telephone. According to Porter, some time before the end of March, 2008, L.B. communicated that she was not interested in continuing with the service but did not provide reasons for her decision.

[100] Porter confirmed that her services are "voluntary" and that L.B. would be welcome to re-engage if she wants. Porter believes that she and L.B. had established a good rapport; and she speculated that the current court proceedings and the related stress may have influenced L.B.'s decision to forego services.

Dr. Simon A. Brooks, psychiatrist

[101] Simon A. Brooks (Brooks) is a staff psychiatrist at the South Shore Regional Hospital and a consultant in adult mental health for the Mental Health Branch of the Department of Health. Preparatory to his qualification by the court to give expert opinion evidence, he introduced his Curriculum Vitae (Exhibit 12)

[102] The parties agreed that L.B. has an extensive medical history and that there are voluminous records and files. By agreement, Brooks was permitted to summarize L.B.'s mental health history in a succinct format. The resulting report appears as Exhibit 13.

[103] According to Brooks, the first significant mental health services contact was in the fall of 1992 when L.B. disclosed a history of sexual abuse by a sibling dating back to the time when she was about seven years old. L.B. was diagnosed as suffering from post traumatic stress disorder. She left or was removed from her mother's home and placed in foster care. When the sibling was charged with and convicted of sexual abuse, L.B.'s family abandoned her.

[104] In late 1993 it was thought that the family might reintegrate; however, this did not occur and L.B.'s behaviour reportedly deteriorated to the extent that she was admitted to the IWK Hospital in Halifax between the spring and summer of 1994. The diagnosis at the time was major depression, post traumatic stress disorder, and anorexia. During 1993 and 1994, she saw one or more therapists at a mental health clinic. In August, 1995, she took an overdose of medication and alcohol. She was readmitted to the IWK; and her family reportedly became engaged in inappropriate and destructive conduct which further exacerbated her condition. In early 1996, L.B. took an overdose of medication and was admitted for a short period of time to a local hospital. As a grade 12 high school student at the time, she was drinking alcoholic beverages, using cannabis, was sexually active, and working locally. However, she was well settled in her foster placement.

[105] Subsequently, L.B. left school and went to live with her then boyfriend S.B. whom she subsequently married. She abandoned plans to attend university for which she had been accepted.

[106] In April 1997 she experienced a brief psychotic-like episode following a break up with S.B.. She was admitted to a local hospital. The parties reconciled; but she was readmitted to hospital in early May and remained as an inpatient until she discharged herself against medical advise in early July, 1997. At the time, reports disclosed that

L.B. was exhibiting signs of mania, hyperactivity, and grandiose and elevated moods. The diagnosis was one of bipolar disorder and a medication regime was initiated.

[107] A son, S.B., was born in mid May, 1998. However, L.B. was soon admitted into hospital where bipolar disorder was again diagnosed and which was complicated by a depressive episode with psychotic features associated with postpartum illness. Following discharge from the hospital, L.B. was supervised medically by her personal physician with apparent success for several years. Unfortunately, S.B. was later taken into care by the agency.

[108] A second son, D.B., was born in late July, 2000. There was another mental health referral in August, 2003 when it was learned that L.B. had briefly stopped taking her medication for bipolar disorder. Her personal physician made a referral to the local agency which, in turn, took D.B. into care. By August, 2003, local mental health officials had decided that L.B. was no longer seriously ill.

[109] In mid August, 2006 L.B. was seen by another psychiatrist who noted that a third child, G.B., then one year old, had been born and diagnosed with cancer. The mother's mental health condition rapidly deteriorated. A psychotic disorder was diagnosed but not otherwise specified at the time. There was a recurrence of psychosis such that she was admitted to the inpatient unit at the local hospital in early February, 2007 and was diagnosed as being manic. Subsequent to that admission, she consulted with Brooks for follow-up.

[110] Brooks last saw L.B. in mid January, 2008 when she self-disclosed that she was sleeping well, had gained some weight, and was generally coping with life. Brooks stressed that he did not substantiate or verify these self-disclosures.

[111] Brooks wrote that L.B.'s presentation to him has always been "abnormal". He wrote that she is clearly and intensely dependent on her husband, that she clings to him physically on most occasions, and tries to avoid answering questions directly if she can induce her spouse to do so on her behalf. He noted the "inconsistency" of his patient with other mental health professionals.

[112] In his summary, Brooks opined that it is "quite clear that this lady suffers from a chronic recurrent psychotic disorder, probably best understood as bipolar disorder, manifesting itself in episodes of mania and of depression, and apparently fairly responsive to mood-stabilizing medication...."

[113] In terms of prognosis, it is Brooks' opinion that her chronic psychotic disorder will continue but, as long as she continues to take appropriate medication, it is unlikely she will have major manic or depressive episodes. That said, he wrote that the risk of these can not be eliminated. In short, he said that the disorder is not curable but it can be managed. Insofar as her attachment problems are concerned, Brooks' opinion is that they are largely psychological in origin. He opined that they may be responsive to long term psychotherapeutic approaches, but over the past few years he believes her symptoms have become worse rather than better. It is also his opinion that there is little likelihood of her problems resolving themselves in the near future (i.e. next year or two).

[114] In his testimony, Brooks said that D.B. was always present during consultation and he could not recall an occasion when he saw L.B. alone. In terms of her current treatment program, he stated that he was supposed to have been seeing L.B. monthly, but has not seen her since completion of his written report. Brooks acknowledged that he has prescribed medications for L.B. in the past but he does not usually, and has not recently, consulted with any others regarding his prescriptions.

[115] Asked about L.B.'s psychological difficulties and in particular her attachment problems, Brooks described her presentation as "way beyond normal" and that she largely functions through her spouse.

[116] Asked what he expects will happen since she has not recently consulted him, he said that either she or her family physician could make a referral to the local mental health service providers. However, he stressed that the onus would be on the patient to seek out services. He noted that it is not unusual for patients to go weeks or months or even years without psychiatric consultations.

[117] Also stated in testimony was the fact that L.B.'s attachment issues are running parallel to the bipolar disorder and not caused by the latter.

[118] In terms of potential long term psychotherapy, if L.B. decided to re-engage in services, Brooks foresees years of therapy - assuming that she acknowledges her difficulties and is prepared to seek out and continue with help. He would foresee a couple of hours weekly over several years although the specifics would have to be worked out. He also stated that a gradual weaning of her dependency from S.B. is crucial. Should there be another major "episode", he opined that days or even months

may be needed to settle her down once again. He also volunteered that it is difficult to see how she could live independently (at least as of the last occasion he consulted with her).

[119] Asked on cross-examination if the fact that S.B. is now working outside the home and that L.B. must function to some extent independently was a positive development, Brooks agreed - but he suspects that there will be difficulties if there are not already. He also opined that one dependency relationship may be replaced with another - that is, that she may seek out another individual, for example her mother, upon whom she may become dependent.

[120] Brooks confirmed that he has had no direct contact with L.B.'s personal physician and accordingly no discussion about management of her medications, let alone any potential treatment program. He also confirmed that the personal physician is in a position to renew or adjust prescriptions for the patient.

[121] Brooks apparently spoke to L.B. in the courtroom corridor, on the day he testified, about possible follow up with her. He will wait to see if she takes any initiative to resume consulting him.

[122] Broadly speaking, he also opined that he has only seen a <u>slight</u> improvement in her interactions with him and that she is still poor by comparison to other patients in terms of progress.

[123] Asked about the availability of psychotherapy and related services in the local area, Brooks emphasized that the potentially available services are as good as anywhere else in the Province and he exemplified. He was alert to the fact that S.B.'s employment and the distances involved from the B.'s residence to service providers might be somewhat problematic.

A.D., grandmother

[124] A.D. is D.B.'s maternal grandmother. She testified that she has a generally good relationship with both her daughter, L.B., and son-in-law, S.B. Regarding D.B., she said she "loves the ground he walks upon" but she is unable to put forward a Plan of Care for him because of her age. A.D. cared for D.B. for the first six months following his apprehension but relinquished care when he was placed with his current foster family.

[125] Currently, A.D. sees D.B. approximately once monthly. Access occurs over a weekend and is unsupervised. Currently access visits are coordinated with the foster mother. Agency workers assist with transportation and transition arrangements.

[126] A.D.'s historical involvement with the agency which centered mainly on her concerns regarding L.B. are well documented by other witnesses and need not be repeated.

[127] As far as the current circumstances are concerned, A.D. has observed that her daughter is interacting better with D.B. but that D.B. prefers his father.

[128] As far as her daughter's relationship with S.B. is concerned, she described the couple as very close and that S.B. has been a very good husband to her.

[129] By all accounts, A.D.'s access visits with her grandson go very well and there are no protection issues. She would very much like the current arrangements to continue. Those arrangements include L.B. and S.B. coming to her house when D.B. is visiting.

[130] A.D. also volunteered that she would be very concerned about L.B.'s ability to care and supervise D.B. in the absence of her spouse. However, she acknowledged that she would be less concerned if someone else was present when S.B. is absent, particularly for employment. As a measure of the interdependency of S.B. and L.B., A.D. stated that she has never seen one without the other.

[131] Historically, A.D.'s observations were that S.B. did most of the household chores and was primarily responsible for helping D.B. with his school work.

Donna Murphy, clinical social worker

[132] Donna Murphy (Murphy) is a clinical social worker with the South Shore Mental Health Program. She submitted two reports setting out her contacts with L.B. and S.B. and also testified. The initial referral to her in early 2007 had the goal of providing support and grief counselling in relation to their son G.B. At this juncture, L.B. was attending regular appointments with Dr. Brooks. Murphy said that the early sessions focused mainly on G.B.'s illness, the impact of the child's illness on them, and the subsequent assumption of the child's care and custody by the

agency. In mid January, 2007 Murphy was discussing with the couple L.B.'s "attachment" to S.B. and the impact on their son, D.B.. Soon after, D.B. was taken into care.

[133] Murphy met with the couple in early March, 2007 following L.B.'s discharge from hospital after a manic episode with psychotic features. Murphy continued to work with the couple in the wake of D.B.'s apprehension. By May, 2007 Murphy was meeting the parents individually and jointly. By June, 2007 L.B. was having supervised visits with D.B. and Murphy was working separately with L.B. with a view to helping her build her comfort level for independent functioning without her husband's constant presence. By mid June, 2007 Murphy had learned that L.B. did not wish to continue with services. As a consequence, she left messages reminding L.B. of the implications of discontinuing therapy. Through June and July, there were mixed signals regarding the B.s' intentions. However, in early August, 2007 sessions had resumed. The last formal session appears to have been on August 30, 2007. There were a few attempts at re-engagement thereafter, but nothing materialized.

[134] In testimony, Murphy noted L.B.'s episodic perception that she (Murphy) was coming between her and her spouse and otherwise questioning the worker's motives. According to Murphy, she was obliged to respect L.B.'s decisions. She underlined that it is not her role to pursue voluntary patients to engage in or to re-engage in services. Murphy also noted that there had been noticeable improvements in L.B.'s presentation by the end of her retainer.

[135] Murphy added that if L.B. wants to return to therapeutic sessions, in addition to her medical appointments with Dr. Brooks, that she would be welcome to do so.

[136] Murphy observed, by contrast, S.B. to be very guarded and careful throughout. She acknowledged that S.B. encouraged his spouse to meet with Murphy separately. However, according to Murphy, he also had trouble seeing his own role in the family's problems when they were in joint sessions. She also noted a tendency on his part to speak for her at times.

[137] Before concluding her testimony, Murphy noted that L.B.'s attachment to her spouse seemed to be lessening somewhat and conceded that she was not surprised that L.B. decided to terminate the services. She believes, however, that she "left the door open" for re-engagement and that she likely confirmed this to them in writing.

S.B.'s Case

J.R., friend

[138] J.R. has been a resident of Queens County for about 15 years. He is unmarried and has no children. However, he has a brother with a daughter and a sister in the local area with two children. J.R. sees his sister frequently and babysits the children once or twice weekly for an average of one to one and a half hours.

[139] J.R. has known S.B. for over 21 years and said that they are best friends. He met L.B. about 14 years ago. In the last year or so, he has seen the B.s approximately once monthly and said that he saw them more frequently (perhaps two or three times per week) before then.

[140] J.R. has <u>not</u> seen D.B. for the past one and a half years. When he last saw the child, he said that D.B. appeared to enjoy a good relationship with both of his parents and he had no concerns about the child or the parents.

[141] J.R. said that he and L.B. are "fairly good friends" and that they are on "agreeable terms". From S.B., J.R. has learned about L.B.'s mental health circumstances and her progress. Admittedly, J.R. has not spent a lot of time with L.B.. Six or seven months ago, he said she seemed to be inattentive and that she appeared to be having difficulty concentrating. By contrast, at the time of the hearing, he said he had noticed a "marked improvement" and that she seemed more positive in her attitude and more decisive in her presentation to him.

[142] On the assumption that the family may be repatriated, S.B. asked J.R. if he would keep an eye on things, particularly if S.B. was working a late shift. He has been asked to monitor L.B. and D.B. and to intervene, if need be. He is aware of the fact that he might be called to provide coverage at any time that S.B. is away from the home for shift work. Because he is not working at the present time, he stated he is available to provide this kind of supervision and he stressed that he is prepared to help out the family.

[143] J.R. asserted that S.B. has many friends and supports within the community and he exemplified. (However, none of those he mentioned filed affidavits or testified).

[144] J.R. said that he has spoken directly to L.B. about his potential involvement with the family and, according to him, she seems to be agreeable and comfortable with this.

[145] On cross-examination, J.R. admitted that he was unaware that D.B. had been placed with a foster family since last June and was also unaware of the challenges faced by the parents over the last year and which has precipitated agency involvement. However, he was aware (from S.B.) of L.B.'s hospitalizations. He had no personal contact with her while she was under treatment. He admitted that he's had no significant contact with D.B. for about three and a half years. He also admitted that although he was generally aware that S.B. works some late shifts, he did not realize that they are now established as regular and unlikely to change in the foreseeable future.

[146] J.R. also admitted he has a heart condition for which he has been prescribed medications. According to him, extreme physical exertion or emotional stress could potentially trigger his heart to go into fibrillation.

[147] J.R. confirmed that S.B. first approached him about helping out with the family approximately seven or eight months ago and that they have discussed the issue several times since. However, his first conversation with L.B. on the subject was on the day of the hearing.

S.B.

His Plan

[148] S.B. submitted an affidavit in early May, 2008 (Exhibit 8) and testified. He opposes placement of D.B. in the agency's permanent care and custody. His belief is that D.B.'s best interests would be served by his return to the family home where he can be parented by both parents. With respect, however, his evidence and the submissions on his behalf were disjointed and inconsistent. Sorting out his Plan (or plans) was difficult.

[149] In his affidavit, S.B. acknowledged his wife's ongoing struggles with mental health problems which he concedes need to be monitored through the continued involvement of mental health professionals and/or treated with medications. The submission of his counsel was that the foregoing can be accomplished without agency or court supervision.

[150] S.B.'s testimony was that he wants is a chance to show that he can come up with a viable plan for D.B.'s return to the home and for repatriation of the family. When pressed by agency counsel, S.B. agreed that he is "concerned" about his wife's ability to parent D.B. alone: "... "it would not be wise to leave L.B. alone with D.B., at this time".

[151] S.B. testified that he was and is prepared to rely on what the professionals have been saying, but he simultaneously criticized most of them. Surprisingly, in the courtroom, he disclosed that he had not read the litigation guardian's final affidavit. When confronted with that document and after had an opportunity to read it, he then strongly disagreed with the guardian's opinion that D.B. should not be returned to the home.

The Apprehension

[152] S.B. provided his own version of the events surrounding D.B.'s apprehension. These need not be reviewed in any detail since he subsequently consented to the findings at the interim, protection and disposition stages. He confirmed he was able to assume primary care of D.B. preceding the taking into care because he was unemployed.

The Maternal Grandparents

[153] S.B. acknowledged that the maternal grandmother was providing occasional child care and had regular contact. He wrote about her role:

> 21. The D.s [sic] have played an important role in D.B.'s life. However, this role has not always been stable. There is ample documentation to suggest that this is also true of their relationship with L.B.. Unfortunately, this has seemed to carry over into their relationship with D.B.. For example, L.B.'s mother can call one day and be happy and easygoing, talking kindly to both L.B. and D.B., but on another day she can be swearing or threatening for no apparent reason. In general, however, the D.s are very good people and, overall, they do have a positive relationship with D.B.. Nonetheless, it is true that L.B.'s relationship with her parents is somewhat conflicted.
>
> 22. With respect to my relationship with the D.s, I had the impression early on that they did not like me, however, I'm not sure of where I stand in their

> opinion now. Despite it all, I believe I do have a functional relationship with the D.s and, because they do play such an important role in D.B.'s life, and D.B. has a great deal of affection for them, I will do whatever it takes to ensure that the relationship continues in a positive way.

Employment

[154] By the time of the hearing, S.B. had been employed for several months as an on-line support worker at a local call centre. In testimony, S.B. clarified that he works 40 to 44 hours weekly from 4:30 p.m. until 1:00 a.m. He is usually at his workplace by 4:00 p.m. This shift is the most stable option for him having regard to his seniority. He hopes that he will be given better shift preferences as time goes on, i.e. from 9:00 a.m. until 5:30 p.m.

[155] S.B. and L.B. have rented a three bedroom duplex for about three years. It is about three to five minutes away from his workplace (by walking) and is able to go home for a half hour lunch break if need be; but he rarely does so. He was formerly employed by another call centre where he was for about one year. He took medical leave when the child G.B. was diagnosed with cancer. While he was on medical leave, the employer went out of business. As a result of the last event, S.B. was unemployed for a period of time.

[156] From the outset, S.B. has known that his work would entail shifts which could impact on D.B.'s care and supervision. He wrote that if D.B. is returned to him, it would be his intention to establish a regular and consistent routine for the child and to engage a babysitter for those times when he is at work.

Arrangements for Care and Supervision

[157] S.B. said until such a time as a professional opinion is offered to suggest that his wife is stabilized and may be able to assume some of the day-to-day responsibilities of primary care, he would ensure that there will be no time when his wife is left absolutely alone with their son.

[158] Although he said he had been able to "short-list" a few names of those who would be willing and able to provide care service, S.B. did not provide timely particulars to the agency. At paragraph 20 of his affidavit, S.B. sets forth the names of those individuals whom he says are part of his family's "social support network".

He wrote that the service providers would have to understand that his wife could not be left unsupervised with their son. He agreed that L.B. or a supervisor would have to help with schoolwork and other duties, except for those times when he is at home, but was vague on what that might entail. He agreed that care or supervision providers may have to be paid, but he has not given much thought to cost or how he would pay for the services. With one exception, none of these supporters filed affidavits or testified.

[159] In a telling concession, he stated L.B. is "not overly happy about the prospect of someone else assisting her with D.B.'s care and supervision".

L.B.'s Role Within the Home

[160] S.B. wrote that he foresees his wife as being an active member of the household and exemplified some of the tasks and activities she would likely be engaged in, much in the same way she had done before. In terms of L.B.'s demonstrated past household responsibilities, S.B. said:

> She did everything with him [D.B.]. She did the cooking of the meals, getting him ready for school, dressing him, bathing him, making sure his teeth were brushed, packing his lunches or giving him lunch money, making his supper for him, making sure his homework was done in the evening. Some times if I was working in the day, because I did have the occasional day, she would take him to the park for the day or shopping, you know. These were just normal little things.

[161] When L.B. last became ill, he said:

> ... I became the primary care giver. I wasn't working at the time so it was either L.B.'s mother, and then when I was home for the few days a week with L.B., I basically did the things ... I did it until he was apprehended and for probably a few months afterward before I saw any improvement [in L.B.] at all because they were working with different medications and whatnot.

[162] Later he added:

> She’s starting to get back to where she was before the whole break down. I mean she’s become sufficient. She’s doing like the housework again; she does all the cleaning essentially, the clothes, the making of the meals.

[163] S.B. disagreed with the maternal grandmother’s less flattering statements regarding the roles of the spouses within the household and he minimized her opportunities for observations of their household routines.

[164] In terms of L.B.’s past household responsibilities, S.B. said:

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The Child in the Community

[167] S.B. broadly asserted that D.B. has friends in the area which he would be able to continue to have social contact with. He did not elaborate. He also wrote that during the summer months, it would be his intention to ensure that his son is involved in outside activities.

[168] He noted that D.B. could attend a local school and that there is a bus stop directly across the road from the residence. He elaborated on the extra-curricular and community activities in which his son could be expected to engage. However, he admitted that he does not have a motor vehicle at present and that this will pose some challenges, at least in the short term.

Response to the PCA

[169] S.B. called no expert opinion testimony to challenge Dr. Hastey's methodology, findings, or recommendations. He denied some of the factual assertions surrounding the domestic violence incident which led to the apprehension. And, he claimed that the bulk of her interviews and inquiries dealt with past parenting (i.e. before May, 2006) and that Hastey did not pro-actively discuss with him the current parenting arrangements and his proposals.

[170] On questioning by counsel for the agency, S.B. stated that the historical background information assembled by Dr. Hastey is generally accurate. He confirmed that L.B. has never lived alone as an adult and that she went directly from foster care to her relationship with him. He confirmed that the couple have never been separated except for her periods of hospitalization and one very brief sojourn before the birth of their first child. S.B. said he did not become aware of L.B.'s mental health issues until about two years after commencement of their relationship. He confirmed that L.B. has never worked outside the home.

[171] He challenged Hastey's assertion that he does not encourage his wife to follow through on recommended services related to her mental health. He asserted that he initiated most of the referrals for L.B.'s benefit when they were needed. He wrote that Jan Porter and Donna Murphy were the only professionals who became involved at the agency's initiative. In that regard, he insisted that L.B. was willing to continue seeing Donna Murphy as part of her treatment and recovery plan but laid the blame for appointment failures largely at Murphy's doorstep. He stated that when he learned that Murphy discontinued services he attempted, without success, to reschedule appointments. He claimed he had "no knowledge" of L.B.'s statements to

the service provider that she did not want to continue and admitted he did not seriously try, on his own initiative, to find out why things had ground to a halt.

[172] S.B. agreed that the agency was prepared to provide transportation for L.B.'s benefit, and for his benefit, for all of the last calendar year. He agreed that he was not working until recently and that the services and transportation could have been utilized at the time.

[173] S.B. wrote that when L.B.'s mental health regressed episodically, it was he who triggered most of the referrals. S.B. wrote that he has ensured that his wife has taken all of her prescribed medications and that he obtains the medications, when required. On the other hand, S.B. also candidly wrote that "unless properly monitored and under this [sic] right regime of medications, L.B. could potentially pose a risk to D.B.". In testimony, S.B. also asserted that L.B.'s "self-medication" has not been an issue and that it was only a problem once in the past period. That is to say, he believes she has routinely taken all prescribed medications as directed. He also reiterated that when he thought that her medications might be contributing to her presenting problems, he took initiatives to report his concerns to medical officials.

[174] S.B. flatly denied that he ever stated a belief that L.B. could care for D.B. alone in her present state of mental health. Hastey insisted otherwise.

[175] S.B. wrote about the "large improvement" in the mother/son relationship. He characterized his son's attitude towards his mother as being "cautious" but, at the same time, as showing that he does have a bond with her. He claimed the agency has not been looking at the "big picture" over the last several years and that it has been focusing on L.B.'s short-term problems and the consequences for the family.

[176] Regarding the observations of L.B.'s conduct during access visits, he minimized the importance of the observations of others by claiming that their observations were only for brief periods of time. That said, he also conceded that D.B. has avoided his mother at times as described by Bouchard and other observers.

[177] S.B. asserts that L.B. is not as "clingy" recently and that her general interaction with the child is considerably improved. He also minimized reports that L.B. had declined solo access visits (except once on Mother's Day).

Floundering Services for L.B.

[178] When he was asked directly by his own lawyer to explain why a variety of potential services for L.B. has floundered from time to time, S.B. stated that she was episodically quite ill and therefore unreasonable and difficult to deal with, at times. Moreover, her consent was always needed because the identified services were all voluntary. The implication was that he has been doing everything he can; and that in some instances the service providers should accept responsibility given her state of health.

[179] Upon acknowledging that his current shift runs from late afternoon to just after midnight, he agreed that his days are generally free and that he could, in fact, attend appointments or help L.B. with her appointments. However, he downplayed this by suggesting that most of the failure was due to problems in contacting individuals and coordinating with their schedules.

[180] S.B. acknowledged that Bouchard has been generally helpful when approached. However, he also conceded that over the last three or four months preceding the hearing that he had not asked Bouchard for any assistance. He reiterated that L.B. did not tell him what she may or may not have told other individuals with whom she has had contact. In the same vein, S.B. acknowledged that there are times when L.B. does not think that she has problems and therefore agreed that it is not surprising she may not have been completely open and frank with him regarding what may have been said to others.

[181] Regarding missed appointments and related issues, S.B. elaborated:

> A lot of times we can be talking about the appointments. Some times it's where she doesn't want to go and I'm kind of you know pushing her to go to rebook things. It all depends on the circumstances. Most of the time you know she doesn't, with her illness a lot of the time she doesn't feel that she needs help when she's feeling well, so she gets to a point where she, you know, doesn't want to go to appointments, doesn't want to see these people, so I'm kind of the person that keeps pushing her to continue with the treatments and seeing the psychiatrist and the doctors and whatnot ... I guess supporting her and telling her that it's something she needs and you know. I go to them with her, basically just reinforcing to her that she needs to do these things.

Response to Psychiatrist's Evidence

[182] When questioned by counsel for the litigation guardian, S.B. struggled with the particulars of his wife's post-release from hospital plan and medication regime. He was able in a general way to discuss changes in the medications prescribed by Dr. Brooks but he believes that Dr. Brooks was incorrect in his recounting of her medication history.

[183] He also testified that Brooks never asked him to leave L.B. during any of the consultations so he could consult alone with his her.

[184] S.B. also asserted that securing and arranging to see the psychiatrist has been problematic.

[185] He said that he thinks his wife is getting better, particularly over the last several months. However, he also conceded, that such improvements have not been formally recognized or assessed by others.

Other Issues

[186] S.B. confirmed that D.B.'s relationship with the current foster parents is very good and he acknowledged that the foster parents have tried very hard to accommodate him and his spouse and to make the visitations as comfortable and successful as possible.

[187] On the issue of D.B. having witnessed the aberrant conduct of his mother and its impact on him, there was this exchange:

> Q. (By Mr. Peacock) Did you notice, did that, did you notice any change in his relationship with his mother after that or...
>
> A. There was a slight, yeah, and you know before that him and his mom were close but after that he was scared for a while.
>
> Q. And when you say he was scared for a while, has that changed again or at all?
>
> A. It's starting to change within the last few months, it has started to change quite a bit where he's giving his mom hugs and kisses, he's been spending time

with her, actually he initiates a lot of contact with her, playing games and things and tries to include her during the visits.

Q. Okay. And what, in your observations, how has L.B. responded to that?

A. She is very quiet and very timid as a person that not bipolar wise, but just as a person in general. She's always been very quiet, very you know, kind of closed; but she does interact with him, you know. It's just that she's not like me, she's not very verbal - like I'm a very verbal person, as you can probably tell. But, she is more quiet, more you know, laid back sort of thing, but she does interact with him; it's just not as verbally as I do I guess.

L..B.'s Case
Franceen Romney, litigation guardian

[188] Franceen Romney (Romney) is a veteran lawyer whose primary interest is family law. In that capacity, she has represented many clients in child protection cases. In the present case, Romney has been acting as L.B.'s court appointed *guardian ad litem*.

[189] Starting in February, 2007, Romney submitted a series of affidavits regarding L.B.'s circumstances as they relate to the agency's intervention and her relationship with S.B. and her son, D.B.. From the outset, Romney identified L.B. as a parent who is clearly concerned about her plight, yet with apparently a limited understanding of the scope of the concerns and challenges she faces.

[190] In July, 2007, Romney noted that L.B. had little interaction with D.B. during at least one access visit and that the mother did not seem to know how to interact with her son. Also noted were S.B.'s attempts to facilitate interaction between mother and son. That said, Romney's opinion was that L.B. had regained some independence from her spouse and appeared to be making some progress.

[191] Based on her personal observations, Romney was able to provide suggestions to agency access facilitators to promote better quality interaction between mother and son during access visits. By September, 2007, Romney was recommending that the mother be allowed additional time to respond to her medications and to obtain meaningful therapy. To that end, she wrote to L.B.'s psychiatrist and made specific suggestions to advance therapy. Also in September, 2007, Romney took the

position that L.B. has a mental illness which prevents her from interacting with her son in the same way and to the same extent that most parents do. She noted a clear bonding between father and son which is consistent with the observations of other professionals then and now.

[192] By mid December, 2007, Romney had been in touch with Dr. Susan Hastey and had reviewed several of Hastey's reports. Romney took the position that the bulk of the recommendations by Dr. Hastey (discussed elsewhere) were in L.B.'s best interests. Romney also reiterated her opinion that S.B. and D.B. were emotionally bonded to one another.

[193] Romney's February 11th, 2008 affidavit (Exhibit 17) summarizes the full range of court documents which she had access to during the course of the proceedings. She also attended a Plan of Care meeting when the formal Plan of Care for D.B. was discussed by the various individuals involved in the case. Additionally, Romney had access to agency disclosure materials which have not been filed with the court.

[194] As appears from Romney's last affidavit, there were discussions over a year ago about the possibility of L.B. residing with another family member - as opposed to returning to the family home with S.B. after her release from hospital in early 2007. As it happens, there was no other family member or other individual with whom L.B. could reside. The same subject was broached with Yves Bouchard at the agency who confirmed his understanding that there were no alternate accommodations available for L.B.. As at the hearing, this situation had not changed, according to Romney.

[195] Romney also made inquiries about the possibility of some type of community placement for L.B. to assist her in dealing with her mental health issues. Romney is satisfied that there are no other services, resources or treatment options available other than that which have already been provided to her incidental to the current proceedings. And, Romney is satisfied that L.B.'s mental health issues continue and that while she appeared to respond to medication and to treatment, at one stage, her progress appears to have plateaued.

[196] Romney has continued her efforts to ensure that L.B. understands the legal process and case developments. L.B. has made it clear to Romney that she wants D.B. to come home. However, it is Romney's belief that it would not be in L.B.'s

best interests for that return to occur. Rather, Romney believes it would be best for L.B. to be at home with S.B. but without D.B. there.

Discussion/Decision

[197] I have considered the following under the **CFSA**:

- The preamble..
- The purpose of the **Act** [section 2 (1)]; and paramount consideration [section 2 (2)].
- The definition of child care services [section 3 (g)].
- Best interests of the child [section 3 (2)].
- Agency functions [section 19].
- Services to families and children [section 13].
- Substantial risk [section 22 (1)] and need of protective services [section 22 (2)].
- Disposition hearings [section 41 (1)]; and evidence taken at the protection hearing [section 41 (2)].
- Disposition orders [section 42] and total duration of disposition orders [section 45].
- Restrictions on removal of children [section 42 (2)];
- Placement considerations [section 42 (3)]; and time limitations [section 42 (4)].
- Review applications [section 46 (1)]; court powers on review [section 46(5)]; and factors to be considered upon review [section 46 (4)].
- Consequences of a permanent care and custody order [section 47 (1)]; access upon such an order [section 47 (2)].
- Termination of a permanent care and custody order [section 48].

[198] The relevant issues and scope of evidence upon review of disposition are found in the Supreme Court of Canada decision **Catholic Children's Aid Society of Metropolitan Toronto v. M.(C.)** [1994] 2 S.C.R. 165.

[199] At the initial disposition hearing in the present case, the court weighed the evidence presented and admitted by consent, and the earlier evidence taken at the protection hearing [section 41 (2)], and the agency's Plan of Care [section 41 (3)]. Because a temporary care and custody order was imposed, **CFSA** section 44 was particularly relevant.

[200] I have again directed my attention to section 46 which requires the court to consider whether the circumstances have changed since the last order, whether the plan for the child's care that was applied is being carried out, what is the least intrusive alternative that is in the child's best interests, and the requirements of subsection 6. Section 46 (5) sets out the court's options on review.

[201] The combined effect of the relevant **CFSA** sections and the Supreme Court's directions is that evidence at a post-disposition review hearing is usually limited to an examination of the circumstances since the last order was imposed. The circumstances at the time of each order are a matter of record. Normally the starting point will be the last review order, not the original disposition order. However, by agreement in the present case, leeway was given to the participants to call evidence not earlier presented and/or not tested by oral testimony.

[202] While the main focus has been the circumstances since the last order, reviews such as this one must still be conducted against the background of accumulated evidence because it is one, continuous proceeding. It is in light of the past evidence that change (or lack of change) is measured. Once the evidence has been delineated, the "twofold examination" called for in **M. (C.)** may be conducted.

[203] My current fact-findings are more detailed than usual since no oral testimony was given before, all previous orders have been consensual , and there was no perceived need for detailed reasons from the court.

[204] As mentioned, the first issue is whether the child continues to be in need of protection and, as a result, needs a court order for his protection. This includes an examination of the events that triggered agency intervention or its continued intervention. The second consideration is the child's best interests against the entirety of the situation.

[205] On the first issue, it is only the father who opposes another finding. As framed by his counsel, S.B.'s position is that there is no substantial risk of harm to the child and that D.B. should simply be "placed back into the care of his parents". The Post-Hearing Memorandum on behalf of S.B. admits that the agency has had a history of involvement with the B. family, including the removal of two other children from parental care. However, it was argued that the historical circumstances of prior agency involvement are distinguishable from the present case "if for no other

reason than D.B. was apprehended after having been raised by the respondents for approximately seven years". Implicit in S.B.'s submission is that the parents will live under the same roof with their son and that the father can be trusted (without a court order or agency support) to have appropriate care, support and supervision arrangements in place for his son when he is at work or otherwise unable to provide them personally. His lawyer said the central issue is S.B.'s ability to provide a suitable home environment for his son "while simultaneously monitoring the relationship between D.B.'s mother, L.B., and her son". Turning the agency's submission on its head, it was submitted on S.B.'s behalf that the "logical inference to be drawn from the Applicant's position in this matter is that but for the presence of L.B. in the family home, there would be no reluctance to return D.B. to the care of his father". Despite the past turmoil within the home, counsel pointed to evidence to the effect that the child continues to be generally well-adjusted and resilient - that is, despite the turmoil the child is doing generally well. This is posited as being a good reflection on both mother and father past parenting.

[206] On behalf of the litigation guardian, it was also submitted that the agency's concerns are really not with S.B. but with his spouse. It was argued that the agency does not have any serious concerns about the father's ability to parent, except to the extent that it is affected by his relationship with his spouse and her mental health challenges. But, as mentioned, the guardian does not seriously challenge Hastey's assessment of L.B.'s inability to parent at this time. (She and S.B. are at odds on this.)

[207] Perhaps more importantly, the guardian submits that advocacy for the mother's mental health plight has not received the kind of attention required to even try to bring about changes in the family's circumstances and, therefore, it would be difficult, if not impossible, for the court to decide with any confidence if such changes are possible. Positive changes would arguably auger against D.B.'s permanent removal from the care of one or the other, or both parents.

[208] According to the guardian, most of the professionals involved with the family have <u>not</u> been focused on the mother's problems, rather on the child. Cast in this light, it was submitted that the professionals have not been very proactive with L.B. who has been unable or unwillingly to be more proactive herself <u>because of</u> her mental health issues - a "Catch-22" situation, to borrow from the movie. So, for example, although there is evidence that appointments with Donna Murphy and Jan Porter floundered, neither of them took it upon themselves to pursue the mother despite the fact that her avoidance or disinterest is likely symptomatic of her state of

health. In the same vein, Dr. Hastey was hired as an assessor - not as an advocate for mental health supports and services; and her retainer lapses after each assessment and report. Julie Nickerson, an access facilitator, similarly was tasked to be an observer. L.B.'s personal physician sees her infrequently, does not act as a medical advocate, and, indeed, has no ongoing contact with her psychiatrist. And, the psychiatrist, Dr. Brooks, admittedly has based his treatment on disclosures by his patient or her spouse without reference to, or consultation with, her personal physician. The psychiatrist has been prepared to consult his patient when asked, but he does not see his role as including active pursuit or follow-up. This approach is the conventional one and has not been directly criticized by anyone. The practical result, however, is that Dr. Brooks has not formally been consulted by his patient since mid January, 2008 and the services provided by other professionals have lapsed or been inconsistent.

[209] As expressed by counsel for the guardian, "L.B. has lacked a personal advocate in her daily life to ensure follow up with regard to medical appointments, to ascertain the concerns of the Agency in this legal proceeding, and to make the professionals involved with L.B. aware of those areas of concern, so that her treatment could be focused on improvement in those areas. This way, L.B.'s medical treatment could have been made more relevant to and congruous with this proceeding." Counsel summed up this way: "There seems to have been a disconnect between L.B.'s mental health treatment and this proceeding". I find merit in this submission.

[210] In my opinion, the foregoing is exacerbated by an even more perplexing scenario. At the risk of over-simplifying, and borrowing again from the movies, S.B. faces something of a "Sophie's Choice"- that is, unless the situation changes, <u>any</u> choice he makes may have unbearable consequences. If he chooses to stay with his wife, he risks losing his son. If he chooses to separate from his wife, he may gain his son but risks losing her. Unfortunately, the first (and obviously preferred) choice can only be forestalled if he and she present a comprehensive, realistic parenting plan. Thus far, this has not occurred.

[211] From the agency's perspective, the child protection risks <u>have</u> been established by the evidence on a balance of probabilities and all viable options in the child's best interests, short of permanent care and custody, <u>have</u> been pursued or ruled out. Coupled with an exceptional concession for access, the agency would like its Plan endorsed.

[212] With respect, all counsel glossed over applicable statutory time-lines which deserve closer attention in this unique case. Because the original disposition order was one of temporary care and custody under Section 42 (1) (e) of the **CFSA**, the total period of duration of all disposition orders for D.B., who was six years of age but under 12 years of age at the time proceedings were started, is 18 months calculated from the date of the first disposition order. [Individual orders have a six-month cap - section 45 (2) (b).] The anniversary date of the first disposition order is September 6, 2008. If the child is not placed in the permanent care and custody of the agency, alternate review of disposition orders could potentially run until early March, 2009 (if the proceeding is not dismissed or discontinued). This is obviously relevant because, among other things, the court must be satisfied that the circumstances justifying an order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits based on the child's age so that he can be returned to one or both of his parents.

[213] Substantial risk means a real chance of danger that is apparent on the evidence. Any identified risks of physical harm must be tethered to evidence that one or both parents have failed to, or are unlikely to, adequately supervise and protect their child; and the risk of emotional harm must be supported by evidence that one or both parents have failed to, or are likely to, fail or refuse to obtain services or treatment to remedy or alleviate the harm.

[214] I find the weight of the evidence is that the mother is still at substantial risk of harming the child as contemplated under the relevant **CFSA** categories. The risk is directly linked to her mental health condition. Allowing that Hastey questions whether L.B. can ever resume full-time co-parenting, on the evidence there would be no perceived substantial risk if S.B. did not leave D.B. at any time in the unsupervised care and control of L.B.. The reality is that he cannot meet this standard because he must be away from the home regularly and for significant blocks of time.

[215] With respect, the father's case in support of dismissal is long on generalities of what he will do to meet the risks and glaringly short on specifics. Given the number of months that the matter has been before the court, it was surprising that he did not have very concrete plans, and a line-up of witnesses to verify them, by the time the already delayed hearing got underway. His solo affidavit and rather poorly organized presentation left more questions than answers at a stage when answers were called for.

[216] The evidence does not support S.B.'s contention that L.B. is fully cognizant of and comfortable with his stated plan to have other individuals within the home when he is absent. None of the proposed supervisors/caregivers have been vetted by the agency; and it was somewhat naive to think that the agency would modify or abandon its Plan, or that the court would endorse a discontinuance, just on his assurances. I am cognizant that S.B. has had to make herculean efforts to manage all of the competing demands on his time, including those associated with ensuring his mentally ill wife keeps and maintains all professional appointments, that she adheres to her medication regime, and that she seek more or better services and supports, etc. - on top of his responsibilities as a father and breadwinner.

[217] Although no significant child protection concerns are tethered to his parenting capacity or abilities, and allowing that the father/son bond is demonstrably very strong, the child protection issues have not abated because S.B.'s Plan calls for what amounts to co-parenting of the child under the same roof without, I have concluded, sufficient evidence that D.B. will be cared for and protected, especially in S.B.'s absence.

[218] Having found that the child protection issues are still present, the overriding question is what outcome in all of the circumstances is in D.B.'s best interests.

[219] The court must guard against viewing the exemplary role that the foster parents have played as a standard by which to assess the respondents' roles or by which the outcome of the case should be governed. So long as repatriation of the child is a possibility, nobody should view the case as a thinly veiled competition. The foster parents are temporary, substitute care-givers while the birth parents try to improve themselves or their circumstances and thereby their prospects to resume care. I have directed myself that possible adoption, whether by the present foster parents or others, is a relevant factor, but only one of many. Adoption processes cannot begin unless and until the issue of permanent care and custody is decided. Adoption planning and placement are entirely within the mandate of the agency, in any event. I therefore refrain from speculating about what may or may not happen in an adoption scenario and, of course, I make no assessment of present or prospective placements.

[220] The notion that children have a sense of time that is different from that of adults and that services pursuant to the legislation must respect the child's sense of time must be weighed against the substantive law [**CFSA** section 45] which (as already mentioned) contemplates up to eighteen months of remedial and alleviation

efforts for a child of this age, and the other preamble directives such as those emphasizing that removal of children from their parents is a last resort and that social services are essential to prevent or alleviate the problems of individuals and families.

[221] The B. family is certainly not the first in which one or both parents have experienced serious mental health issues; and they will not be the last. What is unique is that the unresolved problems of one parent are perceived [by the agency] to be so deep-seated and impervious to treatment that the child should be permanently removed from both, without further delay.

[222] On the evidence, I am not persuaded that within the prescribed maximum allowable time period that there are no other potentially viable alternatives other than the permanent care and custody Plan of the agency.

[223] I agree with the guardian's submission that there has been a glaring gap in advocacy on L.B.'s personal behalf which, for a variety of reasons and rationales, has fallen outside of the mandates of counsel, the litigation guardian, and the cast of professionals with whom L.B. has had contact. In reviewing the evidence, the range of residential placement and support options stated to be unavailable in the community generally or to L.B., in particular, consumed only a few sentences. That S.B. has not been as diligent as he might have been in pushing more aggressively for L.B. to keep appointments and to engage in services, or that he has been unrealistic about her potential to resume parenting, has to be balanced with his understandable defensiveness as a loving spouse and one who daily treads a fine line between respecting her rights and that which he is being told, by virtually everybody around him, needs to be done to hopefully improve, not worsen, L.B.'s plight.

[224] Under section 13 of the **CFSA**, mandated services to promote family integrity which can be provided by agencies, or by others with the assistance of agencies, are spelled out. The penultimate one is "self-help and empowerment of parents whose children have been, are, or may be in need of protective services". The stated goal of such services is to promote the principle of using the least intrusive means of intervention and to enable a child to remain with his /her parents or to be returned to them. Reasonable measures are expected from agencies.

[225] While I do not attribute any fault to the agency or other service providers for the present state of affairs, I conclude that the sought-after remedy is so serious, intrusive and final that there should be more time afforded to both respondents, but

especially L.B., to seek out and develop, in tandem or independently, other potentially viable alternatives.

[226] L.B. will require a reasonable period of time to identify and retain an appropriate, specialized advocate (or advocates) and time to develop and put forward her plans, if she wishes to do so.

[227] In the meantime, S.B. will have a chance to seriously think about his own Plan of Care and to craft any changes he considers appropriate. That he has some very difficult choices to make does not mean that he can escape them. Therefore, he may benefit from individual counselling or advocacy services as he tries to do so; and I am prepared to authorize that the cost be underwritten by the agency.

[228] The agency will have more time for creative thinking, investigation and planning on its part. The apparent absence or inadequacy of community-based mental health services does not preclude advocacy on the agency's part; it certainly affords an opportunity for leadership.

[229] Short of permanent care and custody, the options still appear to be repatriation to both parents conditional on adequate child care and supervision arrangements in the father's absence; or repatriation to the father only, with or without agency supervision and support. (There is no evidence as to how wide-ranging discussions among the parties have been. However, in theory, an unconventional resolution could still lie under the **Maintenance and Custody Act** with the consent of the parties to the protection action and the foster parents.)

[230] In the result, I find that it is in the child's best interests that he remain in the temporary care and custody of the agency for six months calculated from the date of this decision, with a further review to be held within three months. A docket appearance shall be scheduled by the Family Court Officer in consultation with counsel. The terms and conditions of the last order for access, supports and services will be the same as the last order except for the specialized services for the parents I have mentioned.

[231] Mr. Ferrier shall submit an order.

Dyer, J.F.C.