FAMILY COURT OF NOVA SCOTIA

Citation: *Mi'kmaw Family and Children Services v. M.W.*, 2016 NSFC 18

Date: 2016-08-23
Docket: FLBCFSA No. 097726
Registry: Bridgewater

Between:

Mi'kmaw Family and Children Services of Nova Scotia

Applicant

v.

M.W., J.W. and M.B.

Respondents

J.B.W.

Third Party

Judge:	The Honourable Judge William J. Dyer
Heard:	July 28 and August 5, 2016, in Bridgewater, Nova Scotia
Decision:	August 23, 2016
Counsel:	Paul Morris, for the Applicant Sinead Russell, for the Respondent, J.W. Shawn O'Hara, for the Third Party, J.B.W. M.W., Respondent, Self-Represented M.B., Respondent, Self-Represented

[Editorial Notice: Identifying information has been removed from this electronic version of the decision.]

By the Court:

[1] For ease of reference, the parties and some family members are identified as follows:

Mi'kmaw Family and Children Services of Nova Scotia is "the agency".

J.W. is the "mother".

M.B. is the "father".

M.W. is the "grandmother".

[2] The mother and the father are the parents of 12 year old J.B.W. who is a party and 10 year old J.B. who is not a party in the proceeding. The mother is represented by counsel. J.B.W. was recently added as a party and is also represented by counsel. The grandmother is a self-represented litigant. The father is unrepresented. (He did not attend the hearing discussed below.)

Background and Issues

[3] The agency took the children into care in September 2015 upon the breakdown of their placement with the grandmother under a **Maintenance and Custody Act** ("**MCA"**) consent order.

[4] The current proceedings under the **Children and Family Services Act** ("**CFSA"**) have been ongoing for almost a year. The agency seeks to place the children in its permanent care and custody. A final review of disposition hearing to consider the agency's proposal has not yet been scheduled.

[5] The grandmother supports the agency's plan. The mother opposes it. The father has not actively participated in the proceeding in recent months; his current position is unknown.

[6] The agency has suspended the mother's access to her sons. And, services are not being offered to her.

[7] The mother has made interlocutory motions/applications for restoration of services and access.

[8] Hearing of the (contested) motions spanned two days. The mother attended the first day; but she did not attend the second. Nor did she attend for a Provincial Court hearing coincidentally scheduled (unbeknownst to counsel and me) for the second day, around the same time, in the same courthouse. As best she could, her

counsel offered some explanations. After some delay, the mother's counsel advised her client would not be attending and that she had instructions to advance the Family Court case to a conclusion in the client's absence.

[9] There were no assurances given about the mother's availability to hear an oral decision later that day or on another occasion. Her counsel found herself in an awkward and uncomfortable situation not of her creation. In the circumstances, I thought it best to reserve my decision for written release.

[10] A temporary care and custody "bridging order" was approved last day pending this decision and to carry the case over until the next review in September.

[11] For the reasons which follow, I dismiss the motions.

The Evidence

[12] The agency submitted evidence in response to the mother's motions. Because the agency's evidence is much more comprehensive than the mother's, it is canvassed first. That evidence gives context to the underlying proceedings while focusing on the immediate issues. Where appropriate, I will direct some commentary to the evidence as I go along.

Anneliese MacPherson ("MacPherson")

[13] At the beginning of the current proceeding child protection worker MacPherson submitted a lengthy affidavit (Exhibit 1). The affidavit's contents established the foundation for the findings at the so-called 5-day hearing and the resulting order grounded in Section 22(2), (b), (g) and (ja), respectively, of the **CFSA**. It is impractical to restate the contents – which are not disputed in any event. However, I will summarize the highlights as recounted by MacPherson.

[14] At the time, grandmother (not the mother) had the care and custody of both children under a **MCA** order approved in mid-August 2015. She and the children were living at a First Nations community. The mother and father had been granted supervised access rights.

[15] There is a significant child protection history as evidenced by the included affidavit of another worker, Leah Watson, who referenced proceedings in 2008 and 2014 and who provided considerable elaboration. [At one stage, a third (older) son was also the subject of agency intervention, but he is not named in the present case.] Within the materials one will find Needs Assessments Reports by a clinical psychologist intended to address the academic and other needs of both boys.

[16] In August 2015, the agency was still involved with and supportive of the family outside of court processes under an Early Intervention Agreement. Access

by the parents was reportedly sporadic, inconsistent and unpredictable. There were renewed concerns about the mother's sobriety – especially during her contact with the children which triggered upset and concerns by the grandmother and by the children themselves.

[17] By early September 2015, the grandmother was disclosing that she was having great difficulty parenting the boys whose behaviours were spinning out of control. [See para. 4 (h)]. At first, the agency was reluctant to summarily remove the children from their family placement. There were extensive discussions among most of the central personalities and many professionals. Alternate family and community placements were canvassed and eventually ruled out. Before the end of September 2015, the agency determined that the grandmother's health issues and inability to continue caring for the boys, coupled with the absence of a viable alternate placement, left it with no choice except to take the children into care.

[18] On September 28, 2015, a temporary care and custody order was approved. The grandmother was granted unsupervised access. The parents were granted supervised contact. Supports and services were specified and mainly directed toward the children.

[19] As appears from the court record, J.B.'s initial placement was in a First Nations foster home, but it could not be sustained and he was placed at the Wood Street Secure Treatment Centre pursuant to a separate application and court process. Before that he had been assessed, on short notice, at the IWK Health Centre in Halifax. (The evidence submitted, the orders, etc. in the secure treatment application were not presented to me.)

[20] Unfortunately, the relationship between the grandmother and the mother was also deteriorating. The grandmother made referrals to the agency alleging episodic drunkenness, harassment, etc.

[21] By the end of September, there were reports that J.B. was disinterested in maintaining contact with his mother. By contrast, J.B.W.'s temporary placement appeared to be somewhat more stable.

[22] The interim hearing was concluded on October 19, 2015. Neither parent attended court, but the mother had retained a lawyer. The grandmother attended, unrepresented. The resulting order mirrored the order at the 5-day stage.

[23] In mid-November, MacPherson provided an updating affidavit (Exhibit 2). Within the affidavit is some evidence regarding the secure treatment application and J.B.'s status. Against this background, the agency continued its investigative

work and its efforts to find suitable family and/or community placements. She said by October 2015, it had been learned that the mother was facing a host of criminal charges, some of which were allegedly related to alcohol consumption by her while under prohibition. Soon after, a comprehensive plan for the family was developed, full particulars of which are found at paragraph 21 of the November affidavit.

[24] The protection hearing was conducted on December 9, 2015. None of the Respondents attended. The agency gave informal notice it might be advancing a plan for permanent care and custody of both children. The mother's lawyer attended that day but had no instructions. The protection finding was made under Section 22 (2), (b), (g) and (ja) of the **CFSA**. There was no countervailing evidence. Terms and conditions for access, and for supports and services, were approved that were identical to those previously ordered.

[25] In early January 2016 the mother's lawyer successfully moved to withdraw from representation based on the mother's failure to instruct her over several months (including several weeks pre-dating the client's incarceration) and a breakdown in the solicitor/client relationship. Although given notice, the mother did not offer any evidence or oppose the application.

[26] By early February, it was known that the agency was definitely moving forward with a plan for permanent care and custody which would be supported by the grandmother. However, the mother was still incarcerated. There was some indication that the father would be opposed and might put forward his own plan of care.

[27] In late February 2016 the first disposition order was granted. Although in custody, the mother participated by a pre-arranged conference call. A temporary care and custody order was approved and the parents were given further opportunity to consult counsel. Terms for access and supports and services were re-iterated. By this time child protection worker, Jennifer McKelvie, had filed an affidavit (Exhibit 3). A copy of the agency's plan for permanent care and custody of each child, dated January 29, 2016, was appended. [It is also marked at Exhibit 4.] Also appended was a report from therapist Jan Cressman ("Cressman") who recommended that access visits with the mother be placed on hold so that both boys could settle into new placements. Cessation of contact with other relatives was not recommended – rather visits were to be supported.

[28] Returning to the McKelvie affidavit, this worker summarized some of the history and developments. At paragraph 6, there is the following:

> On November 24, 2015 a further Family Group Conference took place. Ms. Macpherson [sic] noted that present were Case work Supervisor Leeann Higgins, Anneliese Macpherson [sic], Family Group Conference Co-ordinator Cassandra Hillier, Counsellor Jan Cressman, Youth Support Worker David Hazelwood, Child and Youth Outreach Worker Laura Patriquin, Occupational Thereapist Kathie Brown, Beverly Sutherland, [D.S.] and [M.W.]. M.B. and [JW] were invited but did not attend. Access visits would remain in place for the boys with [M.W.], Bev Sutherland and [D.S.]. There would be overnight visits with [M.W.] and [D.S.] would be taking [J.B.] [sic] on every other weekend. The boys would both continue with counselling and youth support sessions.

[29] In the wake of that meeting, the agency tried to keep the parents informed. A voicemail message was left for the father; but the mother's cell phone was not in service. By early 2016, it was known that the father was facing unspecified criminal charges in Provincial Court. He reportedly received a Conditional Sentence Order spanning 16 months including 8 months on house arrest and an alcohol consumption prohibition (see para. 10).

[30] The mother telephoned MacPherson in mid-December to confirm her incarceration and expected release date (March 1, 2016). The mother was informed about court scheduling and encouraged to contact a lawyer.

[31] Crucially, from the agency's perspective, it had an opinion from therapist Jan Cressman to the effect that the boys' relationship with their mother was very confused, conflicted and unsettling. (This is discussed more fully elsewhere.) The agency decided to follow the recommendations for access suspension.

[32] By late March, 2016 the mother had firmed up Ms. Russell's retainer. Ms. Russell needed time to secure the client's file from the former lawyer and to review the materials. It was represented that the mother may have relocated to the Antigonish area upon release from custody; but no details were provided.

[33] J.B.W. retained his own lawyer, Mr. O'Hara, before the end of April 2016. An application to add J.B.W. as a party was recently approved without opposition.

[34] A formal review was scheduled for May 16, 2016. McKelvie's updating May 10, 2016 affidavit (Exhibit 5) was before the court as was the mother's first affidavit (Exhibit 11). The father did not attend or participate. Another three-month temporary care and custody order was approved that day. And on this occasion an interlocutory hearing at the mother's behest was scheduled to address the issues of her access, and supports and services. By then it was known that the agency was not directing services to the mother and opposing parenting time by her pending the final review of disposition hearing, yet to be scheduled.

Nicole Baldwin

[35] Child protection worker Nicole Baldwin's submitted an affidavit (Exhibit 6) and testified. She recounted the breakdown of J.B.'s foster placement in September 2015 and subsequent events leading to his placement at the Wood Street Secure

Treatment Centre before the end of that month and his expected release and transition to another placement by the end of October. Baldwin summarized the careful planning by service providers and relatives to make J.B.'s return to foster care as positive and smooth as possible in the circumstances (see paragraphs 13 and 14).

[36] As it happens, J.B.'s placement was not finalized until late November 2015. His brother, J.B.W., was already living there. It was not long before it was apparent that the brothers could not remain under the same roof and therefore plans for independent placements were started.

[37] Throughout, Baldwin said Cressman continued to provide counselling to both boys. The agency was carefully monitoring Cressman's involvement and reports, and invariably followed her advice and recommendations. Baldwin was receiving reports that schooling for both boys was progressing without any major concerns and perhaps even better than anticipated.

[38] Baldwin's evidence was that it was at a Risk Management Conference on January 28, 2016 that it was formally decided the agency would seek permanent care and custody of the children with alternate weekend access for the

grandmother. However, the parents' access was to continue at the agency's discretion, subject to supervision in any event.

[39] At the end of March 2016, Baldwin said the agency reviewed an updated report (discussed elsewhere) that included a specific recommendation by Cressman that the mother's access should be suspended until such time as her sons were well-settled in their new foster placements.

[40] In early May, Baldwin was alerted by J.B.W.'s foster parents that he was being very disruptive at school and at home. She summarized the agency stance as follows (para. 65):

> On June 1, 2016, a **Family Group Conference** was held with the following persons in attendance: Casework Supervisory Leeann Higgins, [M.W.], [D.S.], Family Group Conference Coordinator Cassandra Hillier, Counsellor Jan Cressman, Youth Support Worder and Access Worker David Hazelwood, Children and Youth Outreach Worker Laura Winters, Family Support Worker Beverly Sutherland, Occupational therapist Kathie Brown, Foster Care Worker Annette Saulnier and myself. <u>During the course of the Family group Conference the following family plan was developed</u>: Ms. Cressman and Ms. Brown would continue meeting with the boys on a weekly basis; Both boys would continue to meet with Laura Winters on a bi-weekly basis; the foster parents would make appointments for the boys in their care to have their eyes tested; <u>One hour supervised visits would commence for J.W. commencing roughly the first week of July with me supervising at the Department of Community Services office in […]. The Agency would provide transportation for her visits; I would have a conversation with J.W. concerning inappropriate content on her Facebook which both of her sons had access to; [J.W.'s] court date was scheduled for July 28th, Everyone involved with the boys would continue to have the discussion with them about not spending the entire summer in […]; The boys would not be told about the visits with their mother until everything was confirmed or the day before;</u> [M.W.] would let me know if both boys would be going to the community PEI trip; Laura Winters would continue to meet with the boys once a month over the

> summer to check in; David Hazelwood would continue youth support for both boys on a regular basis; Visits would remain the same with [M.W.], [D.S.] and Bev until the transition started; and Cassandra Hillier would look into status cards for both boys. [My emphasis.]

[41] During Baldwin's courtroom testimony, she distinguished a "Family Group Conference" from a formal agency Risk Management Conference by saying the former reflects an informal group meeting and consensus for possible resolution of some or all outstanding issues. She said the Group did not have final decision-making authority. I am satisfied the agency did not commit or bind itself to the Group's recommendations at the time.

[42] Soon after, on June 21, 2016, Baldwin received another report from Cressman which reaffirmed a recommendation for no access with the mother.

[43] The very next day, Baldwin received a referral from J.B.W.'s Youth Support Worker who said J.B.W. disclosed he had seen his mother the previous weekend and alleged she had kicked him and slapped him in the face. J.B.W.'s disclosure prompted both agency and police investigations. The results confirmed what the mother has since admitted – that while under the influence of alcohol she slapped J.B.W. in the mouth or on the face after he swore at her.

[44] Baldwin summarized the dilemma as characterized by the grandmother. This appears at paragraph 70:

> On June 24, 2016 I attended at [M.W.'s] home. She confirmed that on Saturday, June 18, 2016 [J.B.W.] and [J.B.] had gone to their [J.Q.'s] home to visit their cousin [B]. She advised [J.B.W.] returned home about an hour later crying and would not talk about what happened. When [J.B.] returned home he advised what happened and [M.W.] then spoke with [J.B.W.] who confirmed she slapped him in the face. [M.W.] advised she did not go talk to [the mother] about this because she did not want the situation to escalate. [M.W.] advised she noticed a difference in [J.B.W.] and [J.B.] after they see their mother as they tend to get upset, behave rudely and are generally out of sorts occur according to [M.W.]. She advised they do not see their mother on a regular basis but when they are in the […] area is difficult to ensure they do not run into her.

[45] As discussed elsewhere, the grandmother's courtroom evidence corroborated the foregoing.

[46] Baldwin's evidence was that she and two other agency representatives met after the June incident and unanimously decided, albeit somewhat informally, that any prospect of access by the mother was off the table and that the issue should be left for court decision.

[47] During her testimony, Baldwin reiterated the agency's reliance on Cressman's findings and recommendations and its position that re-introduction of access right now will set both boys back and put any progress by them in jeopardy, probably destabilize the current foster placements, and maybe negatively affect schooling when it resumes shortly. She expressed concern that the mother has been deliberately seeking out her sons during their permitted access with other relatives in the local area. Keeping in mind the mother purports to be living at […], not at the First Nations Reserve. the implication was that the mother need not be in the

small aboriginal community coincidental with scheduled weekend visits with other relatives and that it is no coincidence that there is contact outside of the current court order.

[48] Baldwin acknowledged that agency representatives did not contact the mother upon her release from custody last March. However, as appears from other evidence before the court, it is now known that the mother did not provide timely and full disclosure of her whereabouts to the agency, and perhaps her own legal counsel, despite earlier assurances.

[49] With respect, I observe that even at the hearing there was lingering confusion about the mother's residence and living circumstances. This was not helped by the scant evidence the mother offered, and the noticeable absence of evidence from others, on the subject.

The Grandmother

[50] The paternal grandmother is a self-represented party who wanted an opportunity to address the court incidental to the issues the mother has put before the court. It is already a matter of record that she supports the agency's plan for permanent care and custody of both children.

[51] The grandmother was the principle caregiver for several years. The thrust of her testimony was that contact between the mother and her sons inevitably has been followed by significant upset and concern on the part of the boys and dramatic deterioration in their behaviours. The grandmother exemplified, by reference to several incidents, one of which was very recent. By observation, and admittedly by inference, she believes the mother continues to drink alcoholic beverages while professing sobriety.

[52] The grandmother devoted some of her testimony to the June incident when J.B.W. was slapped by his mother. J.B.W. told her about what happened. She stated that in the aftermath J.B.W. was very, very angry, moody, crying and upset.

[53] The grandmother confirmed that both children had been doing well at school, as far as she knows, and were also doing reasonably well at their foster care placements – at least until mid-June. Thereafter, she reported poor behaviours and provided some elaboration.

[54] The upshot is that the grandmother shares the agency's concern that court-sanctioned access by the mother at this time may serve to worsen the boys' situations which had achieved some measure of stability in recent months.

Jan Cressman

[55] Cressman is a psychotherapist who was qualified to give expert opinion evidence regarding therapeutic services for children, adolescents and families. Her curriculum vitae appears as Exhibit 7.

[56] Most recently, Cressman was retained by the agency to provide counselling to both children. She generated a series of reports entered as Exhibits 8, 9 and 10, respectively, and she testified.

[57] Regarding J.B., in late January 2016, Cressman submitted a generally positive report about his progress. Regarding J.B. and J.B.W., Cressman's March 26, 2016 report was on the heels of changes in the foster placements. She opined that both boys were facing adjustment challenges. Stability and predictability at home and at school were perceived as essential. The last paragraph of her March report succinctly captures her opinions at the time:

> The relationships of both [J.B.W.] and [J.B.] to their mother are very confused, conflicted and unsettling. Access visits have not been regular or predictable. Communication between mother and sons is often unreliable and not clear. Because of these factors and circumstances, I am recommending that visits with their mother be put on hold until the boys have time to settle into their respective new placements and mother has shown with her choices that she can be trusted to be a consistent positive influence on the boys.

[58] By the time of her June 21, 2016 report, Cressman had been counselling the children for about 20 months. Therapy sessions have been and continue to be conducted weekly. I incorporate several key passages of this report:

> During this time, I have seen the placements of both boys change several times. In my opinion, the way the boys react in these placements is a result of what has happened in the relationships with their birth parents. In this case, both mom and dad have expressed an interest in having the boys returned to their care. There has been a period of hope for this return several times that has ended in a disappointing and frustrating conclusion. The boys have learned how to cope with the change and chaos as part of their reality. But these back and forth situations have taken a toll on their abilities to relate with others, especially foster parents or those in parenting, caregiving roles.
>
> A description of what happens follows: These placements usually begin (phase one) with a settling in process that has been described by the boys as a relief to actually have a permanent home. Both boys have reported that they make new friends easily. They have reportedly learned how to be accepted in their respective schools. Both boys have expressed their happiness at having a routine and knowing what to expect on a day-to-day basis.
>
> I have explained this cycle knowing that there may be other aspects that can affect the stability of the placements (ie. Issues within the foster family.) But I have summarized the explanation of this cycle of reacting because in my clinical opinion these patterns are caused in large part by the history of an unstable and unpredictable relationship between the boys and their birth parents.
>
> Trust and respect are foundations of a healthy relationship. Without some ongoing predictable, reliable, positive contact that one can trust, such essential bonds are not created. Disappointment, distrust, frustration, anger, and sadness take the place of trust and respect. These emotions are expressed in cycles of behavior as described above in patterns of placement breakdown.
>
> At this writing, I understand that mom, J.W., has expressed an interest in having access with the boys. I recommend that no access happen at this time.
>
> At this point in time, due to the fact that both boys are adjusting to a change of placements it seems important to offer them an opportunity to work with their placement adjustments without the complication and confusion that has been such a part of their relationship with their mother.

> I also recommend that an order of Permanent Care be given so that the boys can be allowed to work with their world in a more settled way. The boys need to be able to depend upon their caregivers. They need to be able to continue to develop and understand how to trust positive role models.

[59] During testimony, Cressman underlined her fear that if the mother is granted regular access and it does not prove to be a positive experience for all concerned, that everyone will be "put in a corner" (ie., the children and the mother).

[60] Asked to elaborate about the time needed for the children to "settle in" [phase 1], Cressman suggested about six weeks. The duration of so-called phase 2 was less precise but Cressman opined that both boys are still in this so-called testing period and she perceives both placements to be at risk as at the current hearing.

[61] Cressman's awareness that one or both boys might deliberately sabotage their placements as has happened before, in her opinion increases the concerns and augers against introducing another potentially destabilizing factor (ie: access).

[62] Asked about the boys' preferences or wishes, Cressman's evidence was that J.B. has not expressed any interest in contact. By contrast, she said J.B.W. expresses a lot of hope, that he is trying to be generous, and that despite all that has happened he would like to give his mother another chance.

[63] Despite his expressed wishes, Cressman still recommends against access and harkened to the mother's well documented past history of similar assurances which were not kept and the consequential negative impact on the children.

[64] Cressman continues to support other current family and community contacts because they have been demonstrably positive, in her opinion.

[65] Allowing that J.B.W., may continue to seek out his mother when visiting locally, Cressman reluctantly conceded on cross-examination that close supervision, management and control over such contacts was preferable to *ad hoc* unscheduled and uncontrolled contact. (That line of questioning was later characterized by the agency's counsel as rhetorical, if not unfair.)

[66] Cressman candidly stated she thinks the prospect for "success" for mother/sons access at this time are faint and that the risks to the children (ie: for disappointment, frustration, destabilizing the placements, etc.) are very real. She maintained the boys need a stable, long-term placement record before contact with the mother is entertained and potentially reinstated. When pressed, she opined this could take about eight months. In the meantime, she reiterated opposition to court-sanctioned, supervised, regular access being embodied in a new order.

[67] The mother's first affidavit (Exhibit 11) was not submitted until mid-May 2016. She characterized herself as a recovering alcoholic whose addiction has caused upset and turmoil in her life for about 13 years.

[68] Although the agency gave notice on the court record in December, 2015 of its intentions regarding a permanent care and custody plan, the mother stated she did not learn of this until a court appearance in early February 2016. In any event, she then declared opposition to the agency's plan

[69] She was incarcerated in Dartmouth from November 2015 until March 1, 2016. (As mentioned elsewhere, proceedings had started in September.) At paragraph 9 of her affidavit (Exhibit 11), she professed sobriety for seven months and committed to maintaining sobriety. She cited her wish to secure return of her sons returned to her care "with time allowed for treatment and therapy". She stated the agency refused to allow parenting time/access after her release. This was not disputed.

[70] Appended to this affidavit are copies of certificates demonstrating participation in, or completion of, several programs while she was in custody. However, there was no substantive elaboration of the course content, etc. She

wrote that she received alcohol addiction counselling while incarcerated, but no report was provided.

[71] The mother also wrote that the agency had not offered her any services following her release. But, she struggled to identify what services she wanted or expected at the time.

[72] At paragraph 15, the mother broadly asserted she had actively sought services in the city on her own initiative and had arranged to enroll in a 10-week program for addiction health and wellness in the Dartmouth area – to start in June 2016. She also said she attended Alcoholics Anonymous meetings. No reports or letters were provided to support these assertions and, on her own evidence, she did not follow-through with them and she returned to the local area.

[73] The mother wrote that she would be residing with her parents in rural Lunenburg County. She stated they offer support and assistance to her. However, neither parent submitted an affidavit or testified on her behalf.

[74] She reiterated a willingness to submit to random drug/alcohol urine testing if such would help convince the agency that she was maintaining sobriety. Given the past legal history, her past compliance record, her current lifestyle and residential

instability, and the absence of a substantive plan of care, the agency was not prepared to provide the service.

[75] In her supplementary affidavit (Exhibit 12), the mother stated she did not keep her release plan to access addiction services in H.R.M. because she could not afford to live there. Hence, she wrote, her decision around mid-March to move to her parents' home. For a brief time she said her father transported her to the city for services and appointments, but he was unable to continue because of his employment commitments.

[76] Locally, at the time, she said the First Nations Health Centre had suspended addiction services because of staffing issues. More recently, she said service had been restored, a suitable counsellor is on site, and she should soon be able to access some addiction services there.

[77] At paragraph 13 of her second affidavit the mother wrote "I have relapsed a couple of times in the past six weeks. I have only drunk two beers on those few occasions". From the agency's perspective, this admission served to undermine her past assurances and promises; and obviated any benefit for testing.

[78] The mother admitted that she was under the influence of alcohol on June 24, 2016. That day she was at her sister's home. Her sons came to visit from

grandmother's nearby home. She was aware, I find, that such contact had not been authorized or approved by the agency but she decided to engage with them anyway. Her evidence was that that J.B.W. was "rude", that she asked J.B.W. to leave and wagged a finger at home while "telling him off", and that he bit her finger. She stated she "smacked him on the cheek" – impulsively; and "very wrongly", with hindsight.

[79] At paragraph 18, the mother rationalized other admitted contacts with her sons by saying they visit locally on weekends, that both run to meet her and to greet her, and that they continually seek out her affection and company. She claimed she "cannot walk away from them" when they approach her and she does not want them to think she is rejecting them.

[80] The mother wrote she recently obtained prescription medication for anxiety and panic attacks. She did not provide a medical report or prescription particulars.

[81] During testimony, the mother confirmed she is unemployed and in receipt of public assistance benefits. She does not have a driver's license and does not own a motor vehicle. Accordingly, she said transportation is a "big issue" for her. Her father can, and does, provide some assistance when he can. Otherwise, it is not clear how she manages to regularly get back and forth from her parents' home on

the outskirts of […] to the First Nations community which I judicially notice is about 13 kilometers away. The closest large medical centre is in […], about one-half hour away by car. The First Nations community, as noted, has a small health centre.

[82] The mother did not disclose her criminal record. She was vague regarding her recent criminal history and the charges which led to her conviction and incarceration. She "thinks" she was arrested and charged in late October 2015 and ultimately sentenced in November 2015 on a variety of charges including, but apparently not limited to, breaches of court orders or undertakings.

[83] When pressed, the mother was equally vague, if not evasive, regarding her alcohol consumption after her release from custody. She admitted her earlier claim of sobriety (in Exhibit 11) was untrue when written, and admitted she actually had two or three "slips" in total since March.

[84] The mother did not challenge the past child protection history as mapped out by the agency workers in their respective affidavits. So too did she admit her sons have been placed almost continuously with relatives since 2009, as recounted by the workers. She conceded that services and supports had been offered to her many times in the past, that they were not always accepted, and, more importantly, her

addiction and other challenges had not been overcome. She acknowledged that this reality explains why her sons have consistently lived elsewhere than with her for many years.

[85] The mother admitted she started to attend Alcoholics Anonymous meetings twice weekly nearby, after she returned to the local area. However, she stopped attending in June. She claimed she has reading materials at home which are sufficient to address her addictions.

[86] When questioned, the mother, at first, denied "striking" J.B.W. as alleged but had to acknowledge that her own affidavit does say that she "slapped" him. On that occasion, she conceded J.B.W. had seen her drinking and that he was very upset about her conduct. During their interaction she said he "disrespected her" and this prompted her to slap him. She agreed he rapidly departed back to a relative's home where he was staying with agency approval. The mother now says she understands why her son was upset and why her chronic problems are very hard on him.

[87] Before completing her testimony, the mother made a surprising admission that she was intoxicated as recent as a couple of weeks ago and that she had to be removed or picked up by somebody. On her evidence, this would have been at

least the third occasion since her release in March that she has been observed under the influence of alcohol.

[88] The mother also confusingly tried to fill in some of the gaps in her written narratives by saying that she had been in the Antigonish area for about one and a half months. The arrival and departure dates from that town are unclear. More to the point, she conceded did not inform the agency of her whereabouts while there, and she did not ask for any supports or services during this time. She was imprecise about her living circumstances while there and provided very little elaboration.

[89] I find that the mother's assertion that the agency consistently failed to offer or to provide services – at least at that time – is undermined by her decision to relocate and remain *in communicato.*

[90] The mother reluctantly conceded that she had promised to keep the agency informed regarding her whereabouts upon release from custody so there could be follow-up by the agency regarding her circumstances and services – but she did not do so. It was only upon her return to Lunenburg County that there was some inkling of her residency and intentions as the court case continued.

[91] In assessing the mother's evidence, I have made allowances for the strain and stress the mother appeared to be experiencing in court as she tried to answer questions, especially in cross examination.

Discussion

Positions of the Parties

Access

[92] On behalf of the mother, it was submitted that the court should authorize a structured access regime for her pending the final hearing, in the best interests of the children. There has been some unauthorized contact with J.B. that has not prompted any referrals, but it was conceded that J.B. has thus far expressed little or no interest in resuming contact. However, reliance was placed on evidence that J.B.W. would like contact, regardless of past history and more recent events.

[93] On behalf of J.B.W., it was candidly submitted that the reality is that both boys have had, and are likely to continue to have, some contact with their mother at […] incidental to their scheduled visits with the grandmother and other relatives. Allowing that contact outside the current court order - aided and abetted by both the mother and the children - is not "morally correct", it was submitted that supervised, scheduled access is preferable to *ad hoc* unsupervised contact. It was submitted that the child's wishes are known and that consideration must be given

to them, despite the dysfunctional relationship between mother and son, and between the brothers themselves. J.B.W.'s belief (and the mother's stated belief) that his best interests will be met by having contact was acknowledged to be one of several considerations - and a subjective one at that. It was conceded that the "best interests" test required by the **CFSA** is normally seen as an objective test. Should resumed access be authorized over the agency's opposition, it was submitted that the court may tailor or craft services, and impose terms and conditions as appropriate to address safety, security, sobriety, etc. concerns and to provide consequences upon breach.

[94] On behalf of the agency, it was submitted that the mother's absence from the second day of the hearing, and potentially a ruling about her interlocutory applications, speaks volumes about the mother's circumstances, her commitment to the case, and her capacity or ability to follow through. It was submitted that the mother really does not yet have a thoughtful or viable plan for access, let alone for resumption of full time care of her sons. It was emphasized that the mother has had many months to consider and to develop her plans [the proceeding began almost a year ago] and, since early March, she has been unable to establish residential and lifestyle stability. Finally, it was emphasized that the evidence includes expert opinion evidence that resumption of access would put both children at increased

risk of destabilized placements, etcetera and likely set back much of the progress that has been achieved.

Services

[95] In a pre-hearing brief submitted on behalf of the mother, her counsel wrote as follows:

> [The mother] is trying to access service. [sic] Her evidence before the Court indicates how trying this is. She is an alcoholic, which is an obvious and specific problem as outlined in the case law above. Her difficulties in accessing services, particularly since her release from incarceration on March 1, 2016, has been sincerely difficult, discouraging, and debilitating in her struggle to maintain sobriety. This will allow her the time, within the statutory timelines, in order to devise a proper plan of care for her sons. We submit that the Agency must provide an individually–appropriate services plan for [the mother] in order to satisfy its mandate.
>
> The goal is to service the children's needs by equipping the parents. [J.B.W.] has instructed his lawyer that he wants immediate access with his mother. Surely it is his, and his brother's, best interests to have adequate services in place for his mother that will help service his needs and interests which is obviously to have immediate access with his mother.

[96] In oral submissions, counsel re-asserted that the agency workers did not do enough to follow up with the mother after her release from custody.

[97] Counsel for the agency invited the court to conclude that it is unlikely the mother will follow through with services. The court was reminded of the well-documented history of the mother not following through with supports and services, whether offered or available through the agency or otherwise. Counsel

underlined child protection concerns and agency involvement with the family dating back to 2002 and the past protection applications in the course of which a wide span of services were provided or offered but which proved unsuccessful in addressing the underlying protection issues as they relate to the mother. It was submitted the agency should not be compelled to provide services at this juncture based on the mother's lately expressed intentions and assurances.

Decision

Statutory Framework

[98] The preamble to the **CFSA** contains a dozen principles, many of which are intersecting and some of which may arguably be difficult to reconcile in any given child protection case. All of the principles are important. Several may be highlighted in the present case: Children are entitled to protection from abuse and neglect; the rights of children are enjoyed either personally or with their family; children have basic rights and fundamental freedoms no less than those of adults and a right to special safeguards and assistance in the preservation of those rights and freedoms; children are entitled, to the extent they are capable of understanding, to be informed of their rights and freedoms, to be heard in the course of and to participate in the processes that lead to decisions that affect them; social services are essential to prevent or alleviate the social and related economic problems of

individuals and families; in the preservation of a child's cultural, racial and linguistic heritage promotes the healthy development of the child.

[99] The purpose of the **CFSA** is to protect children from harm, to promote the integrity of the family and to assure the best interests of children. The paramount consideration is the best interest of the child.

[100] When a court must make an order or a decision in the best interests of a child, consideration must be given to a host of factors set out in Section 2 of the Act. In the present case, the following subsections have particular relevance. I have not used the subsections as a template, but I have considered all of the factors in weighing the evidence and reaching my conclusions:

> (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of the family;
>
> (b) the child's relationships with the relatives;
>
> (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
>
> (d) the bonding that exists between the child and the child's parent or guardian;
>
> (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
>
> (f) the child's physical, mental and emotional level of development;
>
> (g) the child's cultural, racial and linguistic heritage;
>
> …

> (j) the child's views and wishes if they can be reasonably ascertained;
>
> …
>
> (l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;
>
> …

[101] Agency functions are spelled out in Section 9. And, under Section 13, where it appears that services are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with the child's parent or guardian or be returned to the care of the parent or guardian, the agency must take reasonable measures to provide services to families and children that promote the integrity of the family. A non-exhaustive lists of services to promote family integrity is set out in Section 13 (2).

[102] Although it is common ground that both children are children in need of protective services at this time, I am mindful of Section 22 and the relevant subsections which ground continuation of the current case.

[103] Section 41 deals with disposition hearings; Section 42 sets out possible disposition orders. Temporary care and custody orders are governed by Section 44 and gives authority to impose reasonable terms and conditions including, but not limited to, access by a parent or a guardian to the child – unless the Court is

satisfied that continued contact with the parent or guardian would not be in the best interests of the child; access by any other person to the child.

[104] Under Section 44 (3), the agency shall, where practicable, in order to ensure the best interests of the child are served, take into account the desirability of keeping brothers and sisters in the same family unit; the need to maintain contact with a child's relatives and friends; the preservation of the child's cultural, racial and linguistic heritage; and the continuity of the child's education and religion.

[105] Review of disposition orders are addressed in Section 46; and the relevant considerations upon a review are set out in Section 46 (4).

Decision

Access

[106] At the outset, both parents were granted reasonable supervised access. The terms and conditions that have been in place are important

[107] Access was "to occur at such time, place, and be of such duration and subject to such terms and conditions as the Applicant (Agency) determines to be appropriate having regard to the best interest of the children". In practical terms, access by the parents was clearly in the discretion of the agency. Arguably the words "terms and conditions" were broad or generic enough to include new or

additional services for the children and the parents without first seeking court approval. In that sense there was flexibility and room for the parties to craft their own outcomes by reference to demonstrated sobriety, stable residency, counselling, no criminal activity, etcetera.

[108] I hasten to add that the parents [and the agency] were not without remedies or recourse – because every order since September, 2015 incorporated a clause that "in the event of disagreement between the parties with respect to the nature and extent of access, contact or the terms and conditions of access, any party, upon appropriate notice to the other parties, may make application to the court for further directions with respect to access".

[109] This language was incorporated in successive orders through the interim, protection and disposition stages, without objection by either parent until the mother gave notice that access was in contention and it was learned that she was trying to muster a plan of care for return of the children. That was months ago.

[110] The mother's wish to resume access is understandable. The wishes of one or both of her sons to have some contact with her are relevant and important considerations.

[111] The dilemma is that more often than not when there has been contact it has been problematic and, objectively viewed, I find has adversely impacted the children.

[112] Knowing that her motions or applications were pending before the court, it is disheartening that the mother still episodically consumes alcohol, that she has been unable to stabilize her residence, that she has not spelled out a clear, viable proposal for access resumption, and that she recently assaulted one of her sons.

[113] The agency has advanced evidence from the children's therapist that access resumption at this time would bring with it the risk destabilizing the foster placements and potentially setting back any therapeutic gains that have been achieved. The grandmother's evidence tends to corroborate that view. There is no countervailing expert or other evidence on behalf of the mother. Indeed, there is no evidence from relatives, or friends, or members of the community to offset the agency's opposition or to lend support to her cause.

[114] I am persuaded on the evidence as a whole that scheduled, supervised access by the mother, even under strict terms and conditions, is not in the best interest of either child at this time. It will not be ordered.

Services

[115] *L.L.P. v. Nova Scotia (Community Services)*, 2003 NSCA 1 approved or adopted a number of principles [starting at paragraph 18]. The case on appeal followed a final disposition. Although the present case is not yet at final disposition, some of principles in *L.L.P.* merit attention. I will paraphrase.

[116] The goal of services is not to address the parents' deficiencies in isolation, but to serve the children's needs by equipping them to fulfill their role so the family can remain intact. Service-based measures must be those which can effect acceptable change within the limited time prescribed by the **CFSA**. Ultimately, parents must assume responsibility for parenting their children. The **Act** does not contemplate that an agency shore up a family indefinitely. The issue of "duty" of an agency, if any, to provide services is to be decided in a factual context. An agency need not provide all of the services enumerated in Section 13, but take reasonable measures to provide services. Reasonable measures in this context means the agency must identify, provide or make referrals to services and there must be a reasonable probability of success in the provision of services. [See also *Nova Scotia (Minister of Community Services) v. L.S.* (1994), 130 N.S.R. (2d) 193, paras. 15 -19; *Children's Aid Society of Shelburne v. S.L.S.*, 2001 NSCA 62; *D.M.F. v. Nova Scotia (Minister of Community Services*, 2005 NSCA 1.]

[117] With respect, what the mother seeks from the agency was not identified or articulated except for broad reference to addiction services and transportation. There is evidence that voluntary addiction services are currently available at both the First Nations community and […], neither of which are terribly far away. Alcoholics Anonymous offers nearby support which the mother regrettably doesn't think she needs despite her admitted alcoholism.

[118] Outside of the **CFSA** case, there may be other services and supports within or through the aboriginal community, and the wider community, but there is no evidence that the mother has made any serious enquiries. There is no evidence about her efforts or initiatives through family, friends, community or otherwise to arrange transportation when needed for appointments or the associated expense if and when she must pay. It is known that the Department of Community Services is providing financial assistance to her and it may (or may not) be able to offer direct financial help, or services or referrals for counselling, medical care, and other needs – including related travel expenses. But, again, the mother offered little or no evidence about her efforts to see what the Department might be able to offer.

[119] The mother's default position is that it was (and is) incumbent on the agency to explore all of these avenues. On the evidence, the mother looks almost exclusively to the agency to identify and to deliver what is needed at this time.

[120] With respect, the submissions on the mother's behalf boil down to a position that the agency has a duty to start afresh and exhaust all prospective services, referrals, etcetera that might assist her before a final review of disposition hearing looming in the background. This is cloaked with broad reference to "best interests of the children". However, the position deftly sidesteps responsibility and accountability by the parent.

[121] At this time, in my opinion, it is not incumbent on the agency to embark on yet another wide-sweeping search for services that have not already been offered or attempted for many years so that the agency can say "it has left no stone unturned". I find this would be unrealistic and unreasonable; and that the mother must assume far more responsibility for improving her circumstances, and thereby potentially meeting and advancing her children's best interests. Insofar as she is concerned, I conclude the agency has met its duties to her. I will not order the agency to provide any more services at this time.

[122] The agency did not motion to rescind the discretionary, supervised access clause discussed above. By leaving it in place, I trust the mother will see that all hope is not lost. Certainly there are strong incentives for her to voluntarily engage in and follow through with services that are locally available. I encourage her to do so.

[123] Mr. Morris shall submit an order that captures the results.

Dyer, J.F.C.