

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** Nova Scotia (Community Services) v. G.M., 2012 NSFC 1

**Date:** 20120123

**Docket:** FSBCFSA - 073328

**Registry:** Yarmouth

**Between:**

Minister of Community Services

Plaintiff

v.

G.M., S.L. and S.T.

Defendant

**Editorial Notice**

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

**Revised decision:** The text of the original decision has been corrected according to the erratum dated May 18, 2011. The text of the erratum is appended to this decision.

**Restriction on publication:** **Publishers of this case please take note that Section 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.**

**Section 94 provides:**

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

**Judge:** The Honourable Judge John D. Comeau, CFC

**Heard:** Shelburne, N.S. - August 15, 2011  
Yarmouth, N.S.- September 7, 2011  
Yarmouth, N.S. - September 8, 2011  
Comeauville, N.S. - November 10, 2011

**Counsel:**

Donald Harding, Q.C. - for the Minister of Community  
Services

Dell C. Wickens, Q.C. - for G.M.

Wayne Rideout, Esq. - for S.L.

Susan Mullins, Esq. - for S.T.

**The Application:**

[1] This is a disposition pursuant to section 41 of the *Children and Family Services Act*.

[2] The interim order dated January 24, 2011 found the children F. born March \*, 2006, C. born August \*, 2005 and S. born August \*, 2006 to be in need of protection (based on reasonable and probable grounds) within the meaning of section 22(2)(b)(g) and (j.a.) of the *Children and Family Services Act*.

[3] They (the Respondents) were to cooperate with reasonable requests, inquiries, directions and recommendations of Agents of the Minister of Community Services.

[4] Particulars with respect to the obligations of the Respondent father G.M. were as follows:

That the Respondent, G.M. shall have supervised access twice a week at times and places determined by the Agency and monitored telephone access provided that:

a) the child psychologist may observe such visits;

- b) the Respondent shall not use physical discipline during the visits;
- c) the Respondent will not discuss the children's mothers during the visits;
- d) the Respondent shall not introduce Ms. H.C. to the children without the consent of the children's psychologist;
- e) that failure to abide by these conditions may result in suspension of visits until further Court Order.

That the Respondents, S.T. and S.L. shall have such reasonable access as determined in the discretion of the Agency in the best interest of the children.

That the Respondent, G.M., S.T. and S.L. shall be referred to such assessments and counselling as directed by the Applicant.

That the Respondent G.M. shall be and is hereby referred for parenting skills instruction on such terms as directed by the Applicant.

That the Respondent G.M., S.T. and S.L. shall submit to and be referred to such substance abuse testing (whether DNA or blood testing as determined by the Applicant), assessment, counselling, therapy and treatment as directed by the Applicant.

That the children shall be referred to such assessments and counselling as required by the Applicant.

[5] The protection order dated April 27, 2011 following the protection hearing was made by consent. The parties agreed the children were in need of protection and the same provisions set out in the interim order were imposed.

[6] The disposition hearing commenced on August 15, 2011 with the parties agreeing that the child F. be placed in the permanent care of the Minister of Community Services. Access was not ordered.

**Facts:**

**The Facts at the Protection Hearing**

[7] The children were found to be in need of protection pursuant to section 22(2)(b)(g)(j.a) of the *Children and Family Services Act*. They were taken into care on December 6, 2010. At the time of this action they were in the care and custody of the Respondent father G.M.

[8] Evidence is by way of Affidavits. On May 6, 2010 the Minister's Agents received a call about three small children and the Respondent G.M. who had just relocated from \* , New Brunswick. It came to their attention that G.M. had a lengthy criminal record that included violence and involvement with the New Brunswick Children's Aid. No action was taken until December 6, 2010 when based on earlier referral Agents visited the Respondent's home and found two young children home alone. No caregiver was located so the children were apprehended. Contact subsequently came from the Respondent G.M. who admitted his mistake.

[9] Noticing bruises on the children and following interviews, the Agents became concerned about the children being hit by objects such as a belt and spoons.

[10] Reference is made concerning the attachment of a New Brunswick Court Order dealing with the children but it does not form part of the exhibit.

[11] In the agent's supplemental Affidavit she deals with a number of concerns:

### Physical Abuse

[12] The children refer to crying when their father spanked their “ass” for being bad. This was done with a spoon and on occasion with a brown belt. Upon review of “the New Brunswick file” concern was also expressed there of physical abuse of the children. S. was taken to a doctor and he confirmed injuries were consistent with a slap to the face or pulled ear.

### Medical/Refusal of Services

[13] Since apprehension the three children have received medical attention and there is concern about speech development for all three. This type of service was recommended in New Brunswick but there was no follow through.

### Drug Use

[14] There is evidence the Respondent father used marijuana while the children were in his care and he admitted to selling drugs in the past.

### Mental Health

[15] There has been concerns about the mothers' mental health. S.T. talked about suicide and S.L. was diagnosed as being bi-polar.

### Access Visits

[16] Access visits following apprehension were to the Respondent father G.M. twice a week for a period of 1.5 hours.

[17] The worker described the visits as not going well as the father was "demonstrating his aggressive and abusive ways with the children". Visits were punitive and punishment focused. Permission had to be asked to use the washroom. With two of the children in the course of discipline, he aggressively grabbed them by the arm and made comments such as "stop acting like a baby", "take it like a man" and "stop playing power games".

### Emotional Abuse



[18] An assessment of the children was conducted by a psychologist (to be discussed in more detail infra.) because the mothers were concerned that the father had told the children they were dead. One child said his father had told him his mother was murdered and another that her former foster mother died in the water.

#### The Father's Inability to Accept Responsibility

[19] There is evidence of this when he has accused the access facilitator of false reporting or questioned the psychologist's methods of speaking with the children.

[20] He is very rigid in his discipline of the children but cannot admit that he makes mistakes.

#### Parenting Knowledge

[21] The Respondent father was involved for four years with a New Brunswick child protection agency. The issue of leaving young children home alone was addressed with him in New Brunswick but he still did it.

Evidence of Respondent Father at the Protection Hearing

[22] The Respondent father's first Affidavit is dated January 7, 2011 and was for the purpose of reply at the protection hearing.

[23] He refers to child protection proceedings in New Brunswick resulting in the three children being placed in his care with supervision until May 27, 2009. At the end of 2008 the Respondent mother S.L. was incarcerated at the Federal Prison for women in Truro for thirty-three months for robbery. He had concerns about S.L. and the other mother S.T. and it was for that reason he moved with the children to Nova Scotia

[24] He has concerns about the mother S.T. saying she was involved in a dangerous lifestyle of prostitution, drug use and criminal activity. This is F.'s

mother. There is agreement for the permanent care and custody for this child with no access.

[25] Bruises noticed on the children were from rough and tumble play. He admits to spanking the children with his hand through their clothing but he has learned by agency involvement to use such methods as time outs, tone of voice, rewards, praise and explanation. He also indicates he has never locked any of the children in a room.

[26] Leaving the children alone was a mistake. He left them to go to the store for food as he only expected to be gone a short time.

[27] At this stage in the proceedings the Respondent father had very serious concerns about the Respondent mothers seeing the children. At one point at the interim stage there seemed to be more concentration on this than the protection issue.

[28] Some of the issues raised by the Agents in Nova Scotia were dealt with in New Brunswick. The issue of speech problems, the Respondent father indicates,

were dealt with by reference to a public health nurse there. He says the public health nurse in New Brunswick did an in-home assessment and determined there was no need to refer any of the children to speech therapy. It was part of the New Brunswick case plan but the Agency there withdrew from the case and left the children in his care.

[29] With respect to physiotherapy and for S. the Respondent father says he followed all the recommendations because S. was late in walking and had difficulty with it. He took him to the physiotherapist and was informed that he did not need anymore therapy and no more visits were scheduled. His social worker asked him to take S. back to the physiotherapist but again he was told that no more physiotherapy was required.

[30] The Respondent father indicates he did complete the Early Childhood Development program and other programs in New Brunswick to the satisfaction of that province's agency which withdrew and returned the children to him in May of 2009. The return was made based on a case plan that required further participation in programs.

[31] He denies use of drugs (particularly marijuana) while the children were in his care.

[32] The Minister has a propensity to use the access facilitator to assist in the prosecution of these cases. There has been evidence of inappropriate parenting at access sessions. For example the Respondent father requiring the children to ask permission to go to the washroom. He explains this by advising, if one goes in the other goes in and they end up causing turmoil by playing with the water taps and soap.

[33] In New Brunswick there was concern about the Respondent's ability to follow through with the children. This has taught him to establish household rules to ensure safety and maintain rules with consequences for breach thereof such as time outs, loss of T.V. or taking toys away all the while using explanation and direction.

[34] With respect to the mothers of the children, he denies telling C. that his mother was murdered (information an agency worker received from the child). He says he told him "she was sick and far away so could not see him". He meant the

sickness of drug addiction. According to him the mothers were not in contact with the children prior to his leaving New Brunswick. The Respondent S.L. was sentenced to prison in 2008 for robbery and the Respondent father says because of drug addiction her interaction with the children (she is the mother of C. and S.) was ineffective and incident filled. There was concern she would take the children and flee with them. He says he did not come to Nova Scotia to spite the mothers.

[35] The Respondent father admits that leaving the two four year olds alone was a mistake.

[36] On January 10, 2011 H.C. and her seven year old daughter age 24 moved in with the Respondent father. She testified at the hearing on August 15, 2011 that they had met on a computer dating site and when she moved in with him she knew his children were taken away but did not know everything that had happened. This move required her daughter to change schools.

[37] Everything went well for awhile but eventually she felt like a maid, doing laundry, cleaning the house, washing dishes and cooking all the while the Respondent father was playing games on the computer. There were lots of

arguments about this. He played the father role with her daughter whom she believed she was afraid of him. He bitched about the dishes not done and the floor not swept. Arguing continued and he threw a computer chair on the floor. He screamed in her face in front of her daughter. There was no attempt to find work. His priority was the computer and smoking cigarettes and a lot of weed.

[38] One time he pushed her down on the floor and her side and wrist were bruised. After this incident she left indicating she hates and fears him and this was the only man that was ever physically abusive to her.

[39] The Respondent father denies physical abuse on his part stating that H.C punched him in the mouth.

[40] Cross-examination discovered the Respondent father's life growing up. He is now thirty-two years of age and he does not talk to his mother. She hates his father and so hates him. She was violent with him and he ended in and out of foster homes. There were problems there which he describes as a "nightmare". His first place (on his own at 15 years of age) was a trailer in \*. He met a street person as a father figure and was coaxed into stealing. He then met S.L. and things were good

for a while. He admits he did hard drugs and was involved in violence. He has been in jail quite a few times. The longest was eight months for a break and enter. There are no grandparents or extended family that could assist him with the children

[41] He says he would never leave the children alone again because his parents used to leave him alone in the car for hours.

[42] He is on stress leave now, under a doctor's care. There is an admission that, getting the children back would be stressful. "The only thing I want in life is a family".

### Minister's Plan of Care

[43] The Minister is asking for permanent care and custody. Access is not suggested or recommended.



[44] Services provided by the Minister have been outlined in the Plan.

**“Services that have been attempted and their current status:**

These parents were involved extensively with Child Protection Services in New Brunswick from 2006 until 2009, during which time G.M. in particular, received one on one parenting in the home. Upon review of the New Brunswick file, there were contradictions as to whether G.M. ever completed the services required. If G.M. did complete the one on one parenting classes already, the Agency’s concern is that even after having been provided with family support services, the children still needed to come into the care of the Agency in order to ensure their safety and protection.

The objective of the Agency’s intervention was to provide services to remedy/alleviate the conditions which placed these children in need of protective services. The goal of the case plan was for G.M. to obtain the necessary knowledge and skills to adequately parent his children and to meet the children’s needs for supervision, safety, stability and nurturing. While all the Respondents at this time had indicated that their long term plan involved full time care of the children, it was the position of the Agency that direct services would be provided to G.M. as the Agency apprehended the children from his custody.

The case plan for G.M. addressed the issues of supervision, physically discipline, access visits, safety issues, parenting skills/child development, meeting the children’s developmental needs/delays, accepting responsibility, budgeting and emotional harm. G.M. did complete the majority of the tasks on the case plan, however, completion of the case plan has now shown any reduction in risk to the children. Penny Duggan, Family Support Worker has worked one on one with G.M. weekly since the children have been in care. Although they have completed the topics above, the majority of the time has been spent blaming others for the children being in care. G.M. refers to himself as an amazing parent and has advised the social worker that Ms. Duggan is only teaching him things he already knows. The sessions were not productive as G.M. did not present as open to learning new techniques and continues to believe that his way of parenting is

superior. G.M. did not take advantage of his time with the Family Support Worker, but rather he minimized all Agency concerns.

Part of the case plan requested G.M. to attend counseling for emotion management and issues from his childhood (which he continues to say was traumatic). To the Agency' knowledge, G.M. only completed 2 sessions with Debra May (therapist), in the last seven months. This was a recommendation from a psychologist who assessed G.M. in 2007, which to our knowledge he never completed.

While the Agency had not provided direct services to S.L. or S.T. it would have been expected that both mothers would have been involved in counseling and addiction services programs as their past indicates significant issues with additions and mental health. The Agency has not received any documentation of such services being utilized. The Agency would be extremely concerned, if these supports were not put in place for the long term. S.L. has advised she participates in a Methadone program; however, the Agency has not received any documentation to support a counseling component. The complete lack of supporting resources in both S.L. and S.T.'s life is of serious concern and would put these women at high risk for developing further mental health and addiction issues”.

### The Respondent G.M.'s Plan of Care

[45] The Respondent father wants the children returned to him, suggesting unannounced supervision by the Minister's Agents. “They can stop in whenever they wish”. S. would be at daycare (paid by Community Services) and C. would be back in school. He admits he would need help from the Minister's Agents.

DISPOSITION ORDERS SOUGHT

- (a) With respect to the child F. T., born March \*, 2006, Mr. G.M. is proposing that an order be made pursuant to section 42(1)(f) that she be placed in the permanent care and custody of the Applicant, the Minister of Community Services. This is a difficult decision for G.M. to make. There is a strong attachment and bond between the child and himself, and between F. and her two brothers, C. and S.. He makes the decision because of the strong attachment and bond between F. and her former foster mother, K.R. and the Agency's position that if F. is placed in its permanent care, special consideration will be given to Ms. R. And her husband as adoptive parents.

He also makes the decision because he knows that if F. is returned to his care, eventually he would have to deal with the extremely difficult if not impossible issue of access/contact with the child by the child's mother, S.T. G.M. is asking that the children C. and S. be returned to his care under the supervision of the Agency, and he is proposing as a condition of their return to his care that he provide access and contact between C. and S. and their mother S.L. and her family, with the assistance of the Agency and other professionals. He expects that will be a difficult process because of the past

history that is in the records of the New Brunswick Agency. Having to contend with S.T. as well might be more than one person could handle. The New Brunswick child protection recordings show S.T. to be, or at least to have been, an extremely unstable and irresponsible person, a person who has unrealistic expectations and who makes unrealistic demands.

(b) With respect to the children C., born August \*, 2005 and S., born August \*, 2006, G.M. requests pursuant to section 42(1)(b) of the *Act* that they be placed in his care subject to the supervision of the Agency. G.M. proposes the following conditions for his supervised care of C. and S.:

- (i) that he will not use or threaten to use any form of physical discipline with the children;
- (ii) that the children will be properly supervised at all times - they will not be left alone in the home, or in a car, or any other place at any time;

- (iii) that he will follow and continue with the programs and services for the children that have been identified and put in place by the Agency, and if necessary he will re-locate to an area within the province where those services are most accessible or available;
- (iv) he will not consume alcohol or use non-prescribed drugs;
- (v) he will continue with individual counselling for himself for personal issues;
- (vi) he will be receptive to parenting advice and programs provided by the Agency and other child care professions;
- (vii) he will never tell the children their mother, S.L. is dead. He will facilitate contact and access between S.L. and her extended family, with advice and assistance of the Agency and other childcare and child behaviour professionals and experts. If S.L. relapses into the life she had before going to prison in 2008, resulting in her contact and access with the children being

compromised, he will nonetheless continue to provide contact and access between the children and her extended family.

#### The Respondent S.L.'s Plan of Care

[46] The Respondent S.L. is the mother of S. and C. and she says she would want C. in her care with access to S.. There is o specific written plan.

#### Professional Report - Susan Hastey (The Parents)

[47] Susan Hastey Ph.D. prepared a parental capacity assessment. She made an extensive review of Agency documents, as well as consulted with counsel for G.M. and S.L. A review was also made of reports from a speech language pathologist and psychological reports from Toni Campagnoni (to be reviewed infra.) Affidavits of the parties in this proceeding were read. She also obtained the New

Brunswick psychological assessment and parenting capacity report dated July 25, 2007.

[48] An Affidavit of a social worker from the Minister of Family and Community Services, \* district office outlines the previous involvement of G.M.'s family with this child protection agency at p. 7 of her report.

“This Affidavit indicates that in this Agency’s involvement with G.M., the historical issues of concern held by this Agency were unstable relationships on the part of G.M., residential instability, a history of criminal behaviour, some of which he had been incarcerated for in 2005. It was noted that G.M. had a previous history of financial instability and was in a position of owing back payments to New Brunswick Housing dating back to 1998 at the time of this 2007 Affidavit. G.M. had informed this Child Protection Agency that he had been using drugs during the period of their involvement and he agreed to drug testing as a condition of his maintaining custody of the children.”

[49] Testing was done with the participation of all the Respondents.

[50] The Assessor concludes as follows:

### “CONCLUSIONS

The above assessments of parenting capacity in regard to G.M., S.L. and S.T. indicate that each individual has significant challenges in regard to providing a stable home environment for themselves and their children. The three children in question, C. age 5, S. age 4 and F. age 5 are children with High Needs and Special

Needs. As such each one of these children require a stable and appropriate home environment in which the Primary Caregivers are fully aware of the broad range of social, emotional and physical needs of each child and in which the Primary Caregiver is willing and capable of working with the appropriate professionals within their community in regard to addressing the needs of each child.

The children C. and S. are also children with specific social, emotional and developmental needs. Given the birth history provided by S.L., there is a strong indication that both C. and S. could in the future be diagnosed with Fetal Alcohol Syndrome (FAD). This is a syndrome that affects children on a broad cognitive basis as well as in other developmental areas. It will require that the Primary Caregiver of each of these children be well educated in what may be the outcome of such a diagnosis for each child. Each child has also been diagnosed with receptive language and general learning deficits at this point in time. In a collateral interview with Psychologist, Toni Campagnoni and in reviewing her reports on C. and S. there is a strong indication that the Primary Caregiver of each child will have to closely liaise with school professionals and with medical professionals within their communities in order for these children's needs to be addressed in a timely basis. This requires not only vigilance on the part of the Primary Caregiver but an ability to clearly prioritize the needs of these two children both in the home and in regard to their day-to-day routines and also within the community through an active advocating for the children within the broader community.

It is this Assessor's opinion that S.L. has not had her social and emotional needs met. She has significant challenges across a broad area in regard to her own needs and in protecting herself from risk and it is unlikely that she would be able to address the significant deficits and needs in regard to her sons C. and S..

Chronic neglect of the children is clearly reported in the New Brunswick Case Recording Events and is also clearly reported in the subsequent investigations noted in the Shelburne District Office Case Recording Events in the involvement of the Applicant Agency.

## **RECOMMENDATIONS**



Given the findings of the above assessment and the findings and observations of collateral sources, I believe it is in the best interest of the children, C. **DOB: 08/\*/95**, F. **DOB: 03/\*/06** and S. **DOB: 08/\*/06** for the following to take place and I therefore recommend:

1. **THAT** the children C. (**DOB: 08/\*/95**) F. (**DOB: 03/\*/06**) and S. (**DOB: 08/\*/06**) be placed in the Permanent Care and Custody of the Applicant Agency.
2. **THAT** access to the children, C., F. and S. by G.M., S.L. and S.T. be terminated”.

#### Professional Report - Toni Campagnoni (The Children)

[51] Toni Campagnoni is a registered psychologist. She made a written report on December 21, 2010 concerning her observations of the three children F., C. and S..

[52] Her recommendations were as follows:

“Proceed with caution in terms of introducing the mothers. Prior to any access visits, assessment from files sent from New Brunswick’s Community Services must be reviewed. This psychologist can consult regarding the prior assessments of the mothers.

Given that their father lied to the children about their mothers and that the young children were left unsupervised, his parenting abilities are certainly in question. Psychological harm may have resulted from the father’s lies. If there is no recent parenting assessment on file regarding the father, one should be completed.

Furthermore, developmental assessments are needed and this psychologist will schedule these with the workers”.

[53] This professional testified in court on September 8, 2011. She talked about her interviews with the three children and they referred to (what she calls shocking information re: the childrens’ mothers) that they were dead, they drowned. The children said this came from their father.

[54] The children were very affectionate and open to anyone. This she describes as detachment disorder and leaves them open to child abuse. “They don’t have one attachment figure”.

[55] Written assessments have been provided.

C. - born August \*, 2005

[56] Specific findings from testing indicate much structure and consistency is needed in his home environment.

“C. is currently more than 5.5 years of age and is living in foster care after he and his siblings were initially apprehended due to lack of supervision when he and his

two siblings were found alone. The children disclosed information which suggested possible psychological and physical abuse besides the neglect. The children are placed in three separate homes, but have regular contact with each other and their father.

C.'s current assessment suggests that he has clinically significant issues with hyperactivity, impulsivity, and inattention. It is possible that C.'s issues are due to AD/HD, although the history of structure and discipline in the home is unknown. The AD/HD related behaviors are also seen in children who have post traumatic stress, attachment disorders, and Fetal Alcohol Spectrum Disorder. Clearly, C. needs structure and consistency in his home environment. He needs more supervision than most children his age as he presents as at-risk of harming himself due to impulsivity.

[57] The cognitive assessment suggests his development is inconsistent and fine motor skills are below average. Language development varies.

S. - born August \*, 2006

[58] The Assessor made the following conclusions following testing:

“In closing, S. has a developmental delay and is at risk in terms of his behavioral and emotional needs. S. requires a comprehensive plan and a parent-figure who can work with the service providers. In the past, his father has not been willing to access services and it is clear that S. requires a coordinated effort to improve his development. His needs have been neglected and this places him at a further disadvantage in terms of being able to cope in the classroom environment.

The following recommendations are a result of this assessment:

- 1) S. will be receiving services through the NS Hearing and Speech Clinic to address his language based needs. The service provider will likely be in a position to suggest follow-up activities for the foster home to support the programming.
- 2) A referral for Occupational Therapy is recommended due to the apparent fine motor and possible gross motor delays.”

[59] S. was referred to a speech language pathologist who considered his speech development as delayed; and she (Jill Hicks M.Sc.) makes the following recommendations:

- “1. Attendance at regular speech-language therapy sessions, with daily home practice of goals.
2. Increase speech intelligibility by initially targeting use of final consonants, and the N sound.
3. Use of age appropriate grammatically correct sentences, and correct use of words (such as pronouns and articles) in expressive language.
4. Referral for a pure tone hearing test.
5. Referral to an occupational therapist.”

[60] In his oral evidence the Assessor advises that with respect to parenting, S. needs a parent who can work with a team of professionals. He needs good control

of his temper and frustration. He needs secure attachments. S. will have long term difficulties and changing partners is stressful on a child.

[61] C. needs a lot of long-term supervision and patience is required. Discipline is teaching and it must be a consistent set of goals. There should be no physical force or threatening and in order to do this parents have to be in control of their own feelings.

**ISSUE:** Long-Term care of the two children

**THE LAW:**

“Section 42(1): Disposition Order

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

- (a) dismiss the matter;
- (b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

- (c) the child shall remain in or be returned to the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
- (d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Section 44 and 45;
- (e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Section 43 to 45;
- (f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

Section 42(2): Restriction on Removal of Child.

42(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

- (a) have been attempted and have failed;
- (b) have been refused by the parent or guardian; or
- (c) would be inadequate to protect the child,

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

- 41 (5) Where the court makes a disposition order, the court shall give
- (a) a statement of the plan for the child’s care that the court is applying in its decision; and
  - (b) the reasons for its decision, including
    - (i) a statement of the evidence on which the court bases its decision, and
    - (ii) where the disposition order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons why the child cannot be adequately protected while in the care or custody of the parent or guardian”.

**THE CASE LAW:**

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

“The purpose of the *Children and Family Services Act* is the protection of children. As a result, with the exception of providing whether or not a child is in need of protective services, the welfare of the child is the top priority.

See Re:

Sarty (1974), 15 N.S.R. (2d) 93 and *Children’s Aid Society of Halifax v. Lake* (1987), 45 N.S.R. (2d) 361 (N.S.C.A.). The **Children & Family Services Act**

promotes the integrity of the family but only in circumstances which will protect the child. When the child cannot be protected as outlined in the **Children & Family Services Act** within the family, no matter how well-meaning the family is, then, if its welfare requires it, the child is to be protected outside the family.”

[62] **C.A.S. (Halifax) v. Emmerson** (1991), F.H. CFSA/CAS, (Levy, J.F.C.)

(unreported), p. 19:

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

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

[63] The preamble to the *Children and Family Services Act* provides:

“And whereas parents and guardians have responsibility for the care and supervision of their children and children should only be removed from that supervision either partly or entirely, when all other measures are inappropriate”.

[64] In *Catholic Children’s Aid Society of Metropolitan Toronto v. M(C)*,

[1994] S.C.J. No. 37; 2 S.C.R. 165 paragraph 25 this approach was discussed.



“This non-interventionist approach [in the Ontario **Child and Family Services Act**] is premised not with a view to strengthen parental rights but, rather, in the recognition of the importance of keeping a family unit together as a means of fostering the best interests of children. Thus, the value of maintaining a family unit intact is evaluated in contemplation of what is best for the child, rather than for the parent. In order to respect the wording as well as the spirit of the *Act*, it is crucial that this child-centred focus not be lost ... .”

### **CONCLUSION/DECISIONS:**

[65] The Court made certain findings of fact at the protection stage as described under the heading of that name. The children remain in need of protective services. This is admitted in the Respondent G.M.’s plan of care where he is requesting a supervision order under section 42(1)(b) of the *Children and Family Services Act*.

[66] The purpose of this disposition hearing is to determine the long term plan of care for C. and S., always considering their best interests.

[67] In order to determine this issue, the Court has had the benefit of witnesses for the Minister and the Respondents, along with professional reports on the parents and the children. Based on these reports and consultation of the Minister’s Agents, they have requested the Court to order permanent care and custody. It is

stated that access would not be recommended as it would be the intention of the Minister to place the children for adoption.

[68] As mentioned, the father G.M. wants the children returned to him under supervision with specific conditions including not using or threatening physical forms of discipline on the children. He promises not to leave the children alone at home or in the car or any other place at any time. Further, he agrees to continue with programs and services put in place by the Agency, not consume alcohol or non-prescribed drugs, continue counselling and not tell the children anything derogatory about the mother. He will facilitate access with her.

[69] The Respondent mother S.L. wants one of the children placed with her but she presents no specific plan except for a possible place of residence. Given her history and present situation, placing C. with her would not be in his best interests.

[70] The issue is whether the Respondent father can change his ways (parenting) within the statutory time limits so that it would be in the best interests of the children to place them with him under a supervision order.

[71] The Court makes the following findings of fact:

- [72] 1. There is a history of neglect dealt with by the New Brunswick Child Protection Ministry. The children were returned to the Respondent father under supervision (see conditions supra.) He left New Brunswick and came to Nova Scotia to escape what he described as harassment by the mothers of the children. He told the children the mothers were dead.
2. The Respondent father had a very difficult childhood. At thirty-two years old he does not talk to his mother. As he stated, she hates his father and so hates him. She was violent with the Respondent and so he ended up in and out of foster homes which he describes as a nightmare. He got involved with a street person at age 15 and was involved with stealing and drugs. He has a record and has spent jail time (eight months for a break and enter).

He is presently under a doctor's care for stress and the return of the children to him would add to this.

He has no third party or relative for support.

His comment that "The only thing I want in life is a family" may point to a consideration of his needs rather than those of the child. He believes he is a good parent even in the face of how he has conducted himself that led to apprehension and the vies of the professionals.

3. The Respondent father had custody of the children when they were apprehended and this action took place because Agents visited his home and found two young children (four years old) home alone. Once they were taken into care, bruises were noticed on their legs and following interviews there arose concerns about physical abuse and inappropriate discipline.
4. Following apprehension, access visits with the father demonstrated his aggressive and abusive handling of the children. Visits were

described as punitive and punishment focussed. There was some blaming the children for the predicament he was in. He was physical with the children, advising them to stop acting like a baby or “take it like a man”.

5. Although he was to have had parenting skills developed in New Brunswick, his actions do not display proper parenting knowledge.
6. The parental capacity assessment determined that each of the two parents have significant challenges to providing a stable home environment for themselves and their children. Both C. and S. are high needs and special needs children. It is anticipated both children will in the future be diagnosed with Fetal Alcohol Syndrome (FAD) requiring a primary caregiver to be aware of all the needs of the children and be willing and capable of working with appropriate professionals within the community to address the needs of each child.

The Assessor recommends that C. and S. be placed in the permanent care and custody of the Minister.

7. The professional report on the children indicate caution introducing the children to the mother of C. and S. while the mother S.L. is asking for custody of C. and access to S.. This caution is because of the past or maybe present lifestyle of the mother and the lies made to the children by the father about the mother.

[73] The Assessor believes the children have detachment disorder because they are so affectionate with anyone. This leaves them open to child abuse.

[74] C. needs much structure and consistency in his home environment. S. needs speech-language therapy. Again he needs a parent who can work with professionals, secure attachments and control of his temper, patience, consistency and no physical or threatening is needed from the primary caregiver.

[75] It is clear from the review of the evidence that the mother S.L. is not capable of taking custody of C.. Caution is recommenced just for access for the reasons referred to earlier. This Court finds that it would be contrary to the childrens' best interest to return them to her.

[76] The children are special needs children who will require a stable and knowledgeable primary caregiver now and in the future. Someone who has the parenting ability to understand their needs and provide a stable and safe environment.

[77] As outlined in the facts, the Respondent father has a history of involvement with child protection ministries. No lesson was learned from New Brunswick as to his parenting ability. His family history did not equip him with positive tools to parent these children. The desire to have a family has clouded his perception of what the children's needs are. He believes he is a good parent even in light of Agency directions and professional reports to the contrary.

[78] The Respondent mother S.L. has presented copies of certificates from different courses she has attended. Amongst them presented in evidence is a document entitled "Children Learn What They Live". This was a work by Dorothy Law Nolte Ph.D. in 1954. It has become a child rearing anthem and is relevant to this case.

“If children live with criticism, they learn to condemn.

If children live with hostility, they learn to fight.

If children live with fear, they learn to be apprehensive.

If children live with pity, they learn to feel sorry for themselves.

If children live with ridicule, they learn to feel shy.

If children live with jealousy, they learn to feel envy.

If children live with shame, they learn to feel guilty.

If children live with encouragement, they learn confidence.

If children live with tolerance, they learn patience.

If children live with praise, they learn appreciation.

If children live with acceptance, they learn to love.

If children live with approval, they learn to like themselves.

If children live with recognition, they learn it is good to have a goal.

If children live with sharing, they learn generosity.

If children live with honesty, they learn truthfulness.

If children live with fairness, they learn justice.



If children live with kindness and consideration, they learn respect.

If children live with security they learn to have faith in themselves and in those about them.

If children live with friendliness, they learn the world is a nice place in which to live.”

[79] If the children were returned to their father, given the evidence of his parenting, the children would learn to condemn, fight, be apprehensive and shy. Leaving young children alone as the father did contributed to their lack of security. His family background does not provide him with the tools to provide positive reinforcements to the children that are needed. Services have been provided, particularly in New Brunswick, to guide him in proper parenting but they have not been successful.

[80] It is in the children’s best interest that they be placed in the permanent care and custody of the Minister of Community Services.

[81] The Court has the duty following this type of order to consider access to the parents (see *L.I.v Mi’kmaw Family and Children’s Services of Nova Scotia*, 2011 NSCA 104 (CAN LII)).

[82] It is the intent of the Minister to place the children for adoption. This would be expedited if there were no access.

[83] There is evidence that caution should be the practice if the Respondent mother were to have access. It was not recommended until its method and timing was considered by a psychologist.

[84] Access visits that the father had with the children did not go well. They are doing well in the foster home and any further access to the father might be for his benefit but not theirs.

[85] There will be no access.

[86] Counsel for the Minister is to prepare the order.

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JOHN D. COMEAU  
JUDGE OF THE FAMILY COURT  
OF NOVA SCOTIA

IN THE FAMILY COURT OF NOVA SCOTIA

**Citation:** Nova Scotia (Community Services) v. G.M., 2012 NSFC 1

**Date:** 20120123

**Docket:** FSBCFSA - 073328

**Registry:** Yarmouth

**Between:**

Minister of Community Services

- Plaintiff

v.

G.M., S.L. and S.T.

- Defendant

**Restriction on publication:**

**Publishers of this case please take note that  
Section 94(1) of the *Children and Family  
Services Act* applies and many require editing of  
this judgment or its heading before publication.**

**Section 94 provides:**

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

**Judge: The Honourable Judge John D. Comeau, CFC**

**Heard at: Shelburne, N.S. - August 15, 2011,  
Yarmouth, N.S. - September 7, 2011  
Yarmouth, N.S. - September 8, 2011  
Yarmouth, N.S. - September 9, 2011  
Comeauville, N.S. - September 10, 2011**

**Counsel: Donald Harding, Q.C. - for the Minister of  
Community Services  
Dell C. Wickens, Q.C. - for G.M.  
Wayne Rideout, Esq. - for S.L.  
Susan Mullins, Esq. - for S.T.**

**ERRATUM: Dates Heard on Title Page:  
No court appearance on September 9, 2011 at  
Yarmouth  
The court appearance in Comeauville should be  
November 10, 2011**