FAMILY COURT OF NOVA SCOTIA

Citation: *M.H. v. A.C.*, 2016 NSFC 12

Date: 20160414
Docket: Pictou No. 060782
Registry: Pictou

Between:

M. H. and F.C.

Applicants

v.

A.C. and A.P.

Respondents

Editorial Note: **Identifying Information has been removed from this electronic version of the judgment**

Judge: The Honourable Judge Timothy G. Daley

Heard February 19th and 25th; March 2nd and 3rd, 2016, in Pictou, Nova Scotia

Counsel: Rob Sutherland, for the Applicant M.H.
Roseanne Skoke, for the Respondent A.C.
Shawn MacLauglin, for the Respondent A.P.
Respondent F.C., self-represented

By the Court:

[1] Fundamentally, this case is about D.H., born May […], 2008; S.H., born February […], 2010; K.H., born April […], 2000; and S.P., born October […], 2012. The central and only issue is what custody and access arrangements are in the best interests of these four children.

[2] There are four parties to this proceeding, specifically: M. H. who is the father of D.H., S.H. and K.H.; A.P. who is the father of S.P.; A.C. who is the mother of all four children, and F.C. who is the maternal grandmother of all four children. The various applications were consolidated into one proceeding and the matter progressed through an interim to a final hearing.

[3] This case is not about a competition to prove who loves these children more. It is quite clear that they are loved by all parties to this proceeding and each of those parties wishes the Court to make a decision in the best interests of the children. On the other hand, each party has a different perspective regarding what that best interest amounts to.

[4] In this proceeding, each of the parties has filed extensive affidavit evidence, provided viva voce evidence, and provided or consented to the admission of extensive documentary evidence. In this oral decision I will not review each piece of evidence in detail but reserved to myself the right to expand upon my review of the evidence, the law and my analysis of this matter should be required at a later point.

[5] The current living arrangements for the children has each of them residing with their maternal grandmother, F.C., in her home with her partner. This arrangement is been in place since August 2015 pursuant to a *Maintenance and Custody Act* order.

[6] Since that order was in place, M.H. has had access with his three children without supervision.

[7] At an interim hearing respecting access this Court ordered that the access of A.P. be supervised, the access M.H. not be supervised and the access of A.C. not be supervised. In the latter case, I made specific findings of credibility respecting A.C.'s testimony and I will make further comment about that later in this decision.

[8] In the matter for decision today, the issue for determination is the living arrangements and access arrangements for the children. Each of the parties have put forward plans of care for consideration by the Court. As well, I will review issues of child support arising from the ultimate parent parenting arrangements determined by me.

[9] In determining any issues for children under the *Maintenance and Custody Act*, I am required to consider is the paramount issue the best interests of the children. Specifically, this is set out in section 18 (5) which reads as follows:

> "In any proceeding under this Act concerning care and custody and visiting privileges in relation to a child, the court shall give paramount consideration to the best interests of the child."

[10] The *Act* goes on to direct that I must consider, among other things, the factors set out in section 18 (6). In this decision I take consideration of each of those factors in addition to others in arriving at the determination of what is in the children's best interests. Where necessary, I will touch upon certain of these factors when relevant to this family.

Plan of A.C.

[11] A.C. provided evidence by way of affidavits and viva voce evidence at this hearing. She also provided an affidavit and viva voce evidence at the interim hearing respecting access.

[12] While she originally advanced a plan of care for primary care of the children, at the hearing her counsel withdrew that plan and supported the plan of F.C., her mother, instead. That said, in final written submission on behalf of her, her counsel presents a plan of care on behalf of A.C..

[13] A.C.'s evidence was that she is able to parent her children in a safe and appropriate manner. She maintained that she has appropriate housing arrangements, having been approved for low income housing in Westville. She says that she has appropriate supports in place, the most important of which is her mother, F.C.. It is clear in the evidence that A.C. and F.C. are very close and I have no doubt that F.C. would be a strong support for A.C. and the children if I were to approve of the plan of care put forward by A.C..

[14] A.C. also maintains that M.H. would be a support for her assuming he was consistent with his parenting time and she would look to J.P., A.P.'s mother and S.P.'s paternal grandmother, to continue her role as a facilitator for access.

[15] Finally, as will be noted in a moment, she maintains that the Department of Community Services, known as the Agency, and its workers continue to support A.C. in her efforts to work towards full-time parenting of the children.

[16] It is important to note the context of the involvement of the Agency in child protection matters that concern A.C. and later I will comment on child protection matters concerning A.P.. Respecting A.C., it's clear on the record and from the evidence before this Court that she has not been the primary care provider for the four children since August 2015 as a result of her use and abuse of non-prescription drugs. As with most people facing drug addiction or dependency problems, A.C. has struggle with those issues and appears to continue to struggle to this day.

[17] As a result of those protection proceedings arising from the concerns regarding A.C.'s drug use and abuse, the children were placed in the care of her mother, F.C. and remain with her and in her care to this day. To her credit, A.C. has taken several steps to mitigate the impact of and to deal with the drug issues that she faces. Among these is her entering into a Memorandum of Understanding with the Agency dated December 1, 2015, in which the current parenting arrangements for put into place. I will refer to that document as the MOU. That MOU confirms that she did have supervised access and would not take over parenting of the children at that time.

[18] It was her evidence that she participated in a positive parenting program through Kids First for six weeks, a playgroup in January 2016, another Kids First program for K.H. known as "Ready Set Go" as preschool preparation and has attended with Tearmann House for counselling on relationships. She maintains that she continues to work with Addiction Services and attends for Narcotics Anonymous and Alcoholics Anonymous meetings. Unfortunately, few of these services were confirmed by independent sources. The absence of documentary confirmation would not normally be troubling to this Court except for the credibility issues presented by A.C.'s testimony.

[19] It is also positive for A.C.'s position that she has exercised regular, consistent access to all four children since August, 2015, including nearly daily access in F.C.'s home. There is no doubt that A.C. loves her children very deeply

but it is also equally clear that she faces challenges in persuading this Court that her plan of care is in fact the most appropriate and in the best interests of the children.

[20] First, there was evidence of prior a child protection proceedings arising from the concerns regarding intimate partner violence and alcohol abuse. These prior proceedings involved A.C. and A.P. and there were significant issues of domestic violence and alcohol abuse identified in those proceedings. That said, complaints by A.C. of assault by A.P. in the presence of the children were later withdrawn by A.C..

[21] In subsequent proceedings for child protection, A.C. entered into the MOU which is before this Court. It is clear from that MOU that it would survive Agency intervention and would remain in force until such time as A.C.'s children were no longer required to remain in the care of F.C.. The evidence before me is that A.C. was working cooperatively with the Agency in a rehabilitation and there were no other active plans of care presented to the Agency, whether by M.H. or A.P..

[22] It was the evidence of Chelsey Cullingsworth, child protection worker for the Agency, that the goal of the Agency was the reunification of A.C. and her four children and that the Agency supported the placement of the children with F.C. and did not identify any risks to the children in her care.

[23] It was, however, clear that at the time of entering into the MOU that the Agency was not aware of ongoing drug use by A.C. which later became apparent in the evidence in this matter. As a result, I placed some, but limited weight on the existence and terms of the MOU and the assumptions that gave rise to it because of this conflicting evidence.

[24] A.C.'s counsel has ably argued in her submission that A.C. can meet the needs of the children and addresses each relevant factor under section 18 (6) of the *Act*. Unfortunately, A.C.'s credibility before this court has been brought into sharp relief and in doing so gives rise to concerns respecting her ability to put the best interests of the children first, to be truthful with the Agency and this Court and to leave the Court with any confidence that she has and will continue to deal with her drug issues in the way that she has described.

[25] When A.C. gave her evidence on January 11, 2016, in this court under oath at the interim hearing, I found her evidence to be credible. At that time she

testified under oath that she began using cocaine in May, 2015 and that she stopped using it on either November 3rd, or 4th, 2015.

[26] Subsequent to that hearing and finding of credibility, evidence in this hearing makes clear that A.C. continued to use cocaine and other drugs after November 3rd or 4th of 2015, and prior to the January 11, 2016, hearing. Specifically, she consumed non-prescription illegal drugs on either December 11th or 12th, 2015. While it can be understood that from time to time when giving sworn evidence a witness may confuse dates or otherwise miss-recall facts, it is simply not credible to this Court that A.C. did not know that she had misled the Court in her evidence on January 11, 2016. In fact, I find that she deliberately provided a false evidence at that time in order to advance her position for unsupervised access.

[27] Similar credibility issues arose around postings on Facebook. The interim variation order of December 2, 2015 includes a provision, as requested by A.C.'s then-lawyer, that no one post anything regarding these proceedings on social media. A.C. was questioned about this in cross-examination at the interim hearing on January 11, 2016, and she maintained she did not post anything regarding these proceedings on social media.

[28] Subsequent to the interim hearing, A.P.'s affidavit of January's 18, 2016, attached a copy of the Facebook posting allegedly made by A.C. on January 8, 2016. A.C.'s supplementary affidavit in this proceeding acknowledges that she had posted the Facebook entry.

[29] During these proceedings, as specifically when the evidence of Chelsey Cullingsworth, an Agency worker, was being given, A.C. attempted to deny that the posting on Facebook was hers. After some conversation with the counsel she acknowledged that it was her posting.

[30] Returning to the issue of drug use, there is evidence before this Court that A.C. misled the Agency workers on repeated occasions, denying that she was using illegal drugs when in fact the evidence is clear that she was. While those statements were not made under oath, the fact that she was prepared to lie to the Agency on this most significant issue on a regular and repeated basis raises questions regarding her reliability and credibility.

[31] As well, in these proceedings as A.C. gave evidence that she did not use any other illegal drugs other than cocaine and that the only way in which she took

cocaine was by snorting. When cross-examined respecting the Addiction Services records introduced as part of the evidence in these proceedings, she confirmed that she in fact not only snorted cocaine but also took the drug intravenously. I find that it is in fact material and relevant not only because she consumed drugs intravenously but that she testified otherwise in these proceedings under oath. Further, the same Addiction Services records indicate that she not only consumed cocaine but also hydromorphone, dilaudid, lorazepam and benzodiazepine. The evidence is also that on December 12, 2015, she not only used cocaine but also dilaudid.

[32] There is some further evidence that A.C. has been using non-prescription and illegal drugs for several years. One entry in Addiction Services records indicates that A.C. told the worker that she had been using cocaine four times per week over seven years. In her viva voce evidence she maintains this was seven months, not seven years but I find there is difficulty with that statement as the document notes for self-report that it did not been "fun" for the past year, suggesting that the consumption of the illegal drugs predated the last year by some distance.

[33] As well, A.C. signed the MOU with the Agency on December 2, 2015, in which she agreed to refrain from all drug and alcohol use for the term of the agreement. Within 9 or 10 days she breached that agreement and the evidence is that she used cocaine and other drugs. More importantly, she did not self-report this to the Agency until mid-February, 2016, when a hair strand test was imminent and she disclosed.

[34] Perhaps equally relevant is the evidence of Chelsey Cullingsworth, Agency worker, who testified that the Agency is not supporting the return of the children to A.C. at this time and, in light of the revelations regarding her ongoing drug use in December, 2015, the Agency would have to reassess whether A.C. should have unsupervised access. A hair strand test is pending.

[35] There is further evidence before the Court in the form of a police records which were tendered as business records which raise credibility issues for A.C. as well. These reports and the surrounding criminal proceedings allege assaults and other criminal activity by A.P. against A.C. followed by withdrawals of such charges. This suggests that A.C. alleged criminal behavior by A.P. and then later recanted her statement and claimed she lied. While I must be very careful in commenting on matters of domestic violence that have not been fully heard in

either the Family Court or Provincial Court and while I am fully aware that victims of domestic violence may well make allegations that they later recanted not because they are lies, but because they fear retribution of retaliation by the abuser, when seen in the context of these proceedings and the other evidence respecting credibility, it is difficult to ignore in these reports.

[36] Given these and other concerns I have regarding her credibility, I find that the testimony of A.C. in this proceeding is overall not credible. It is correct that in assessing credibility I have discretion to accept some of the evidence of the witness and not other evidence based on my assessment of the credibility and the context of the evidence and overall matter. In assessing the entirety of the evidence provided by A.C., I find that I cannot and find her to be a credible witness in almost any respect in this proceeding, particularly concerning her position regarding the risk she presents to the children. At this stage, she may well have her drug and alcohol challenges under control. Unfortunately, the wide gap between her evidence and the evidence that I do except in this proceeding suggests to this Court, and I find, that I cannot be certain that she has those challenges under control.

[37] As a result of all of this, I cannot find the plan of A.C. to have the children returned to her primary care is in their best interests. In fact I find that her access should be supervised by her mother, F.C., on the terms and conditions set out later in this decision.

A.P's Plan

[38] A.P. testified at this hearing, providing affidavits in his viva voce evidence. As noted, he and A.C. are the biological parents of S.P. who is now three and half years old.

[39] A.P. is proposing that he and A.C. have joint custody of S.P. and that he have primary care of S.P. in his home which he shares with his partner, L.M. and her four children who are ages eight, five, four, and two respectively.

[40] His plan includes a proposal that A.C. have supervised access with a S.P. and, if M.H.'s plan is approved and his three children are placed with him, that he and M.H. will ensure that all four of the children spend time together to maintain the sibling relationship.

[41] A.P.'s evidence is that he has had joint custody of S.P. with A.C. since 2012 and has had significant access with S.P. throughout that time. In fact by consent order of March 11, 2014, he was granted three consecutive weekends of access for Friday at 5:30 p.m. until Sunday at 5:30 p.m. and on the fourth week and he had access from 5:30 p.m. on Sunday until Wednesday at noon.

[42] A consent order of January 20, 2015, modified the access such that A.P. had access with S.P. every weekend from Friday at 5:30 p.m. until Sunday at 5:30 p.m. and reasonable access otherwise. In was his evidence that he had a great deal of extra time with S.P., over and above the schedule access, particularly during the spring and early summer of 2015.

[43] I find that the evidence makes clear that up until the incident in mid-August 2015, which I will deal with in a moment, A.P.'s access was positive and significant.

[44] Unfortunately in August, 2015, there was an incident at the home of A.P. and L.M. in which J.L. attended at that property. J.L. is the biological father of L.M.'s three older children. It appears that J.L. was under the influence of some substance, produced a knife and was verbally aggressive and physically confrontational with A.P.. A.P. cannot be blamed for the attendance at the property of J.L.. There is, however, some dispute in the evidence as to whether A.P. retrieved his own knife in that confrontation and it is clear that A.P. did not take any steps to de-escalate the situation.

[45] That incident began in the presence of three children including S.P. though the evidence is that they were removed from that situation and did not witness the balance of the confrontation.

[46] It was this incident in August that drew this family to the attention of the Agency. Since then, child protection proceedings were commenced involving L.M., A.P. and L.M.'s four children and they are currently under a supervision order whereby the children remain in L.M.'s care subject to the supervision of the Agency. The concerns identified by the Agency of in those proceedings include domestic violence and substance abuse.

[47] There is been evidence in this proceeding that A.P. has an alcohol problem. His own testimony is that his alcohol consumption has reduced over the years. There were some allegations by one of L.M.'s children the A.P. had been

physically aggressive and threatening though those allegations were later withdrawn by the child.

[48] The evidence of Linda Boudreau, clinical therapist with Addiction Services, was helpful to the Court. The documents in evidence confirm that on December 22, 2015, A.P. attended at her office as a result of a self-referral and she recorded his reasons for treatment which included child welfare involvement and his explanation that there had been a considerable history of substance misuse and abuse and he felt that this may be brought up and affect his request for more access in these proceedings. He was unable to identify goals for treatment as he did not consider his current use of alcohol to be a problem.

[49] The evidence of his mother, J.P., was that A.P. has an alcohol addiction which is long-standing and needs to be addressed. She testified that she has had to call the police to have A.P. removed from her home when intoxicated. She says that this alcohol problem has been present since A.P. was young and that she begged the courts for help. She testified that A.P. had tried to quit drinking 10 to 12 times and always relapsed after being sober for one to one and a half months.

[50] J.M., mother of L.M., testified that when A.P. was not drinking there was no problem. But when he was drinking it was a problem. She testified that she went to the home anytime she was concerned with A.P's drinking. This reinforces A.P.'s own description of long-standing history of alcohol abuse which I accept he is attempting to control. That said, both in these proceedings and in the child protection proceedings, his alcohol consumption, history of abuse, and ongoing risk is of concern to this Court.

[51] After the child protection proceedings involving A.P. were brought forward to this Court, his access was varied to supervised access on Saturday from 2:00 p.m. to 4:00 p.m. and Sunday from 2:00 p.m. to 4:00 p.m.. Subsequently, it was modified to Saturday from noon until 4:00 p.m.. Additional access was granted for Christmas 2015 and later, as a result of the interim hearing in this matter, A.P's access was varied to provide he that would have six hours on Saturdays with the first two hours supervised, the middle two hours unsupervised and the last two hours supervised.

[52] The evidence from all relevant witnesses is that this access is going well for S.P.. A.P. has been respectful of the access terms and is compliant with the order.

[53] A.P. is been in a relationship with L.M. for over a year and they are engaged to marry later in 2016. L.M. is employed full-time. She has four children at home and has primary care of each.

[54] A.P. and L.M. rent a home in Thorburn and no concerns respecting their living arrangements has been raised. It would certainly be adequate for the care and maintenance of five children if ordered.

[55] A.P. was working full-time, says he lost his job because he had too many days away from work addressing A.C.'s need for care of S.P. but that he is now working part-time and hopes to be full-time in the near future.

[56] Respecting the incident between A.P. and J.L., not only was it was eight months ago but A.P. and J.L. have reconciled in some sense. The evidence is that they are not friends, but are able to cooperate respecting access and other issues for the children in their homes. It is further relevant that no charges were laid by the police arising from this incident and there has been no further police involvement.

[57] It is important to note is that though the Agency is involved with A.P. and L.M., there is no restriction on A.P's time with L.M.'s four children. That said, both A.P. and L.M. continue services through the Agency including A.P's engagement with New Leaf and Addiction Services and he may be subject to a hair strand test in the future by the Agency. Both A.P. and L.M. have been fully cooperative with the Agency.

[58] Somewhat concerning is the evidence respecting A.P's engagement with Addiction Services. It was the evidence of Linda Boudreau that she met with A.P. for the first time in December 23, 2015, to begin the standard assessment. Another appointment was scheduled for January 28, 2016, to complete the assessment but A.P. missed that appointment and therefore, at the time of this hearing, the initial assessment has not been completed. That said, A.P. did self-referred to Addiction Services.

[59] A.P. reports that he now typically consumes three to four beers per week and this was confirmed by his partner, L.M.. In fact his mother J.P. testified that he appeared to consume a lot less alcohol than he had in the past.

[60] The evidence of Tonya Jennings, Agency worker, was that as long as A.P. was complying with services requested by the Agency, the Agency had no

concerns with him being around and living with L.M.'s children on an unsupervised basis and had no concerns with unsupervised time with S.P..

[61] While it is correct that A.P. does have a criminal record, the offenses for which he was convicted are dated and three alleged offenses involving A.C. were withdrawn or dismissed.

[62] In assessing the plan of care of A.C., it is clear to this Court that, absent the issues that arose out of the confrontation on August, 2015, and the history of alcohol abuse, A.C. would be able to provide an appropriate and safe environment for S.P.. But I cannot ignore those factors that brought them before this Court.

[63] A.C. remains subject to a child protection proceedings involving him, L.M. and her four children. He is not fully engaged with services, specifically Addiction Services, in a way that would satisfy me that his alcohol abuse history has been dealt with appropriately. While the consumption of the amount of beer testified to at this stage would not normally give rise concern, when coupled with his admitted history of alcohol abuse, I do have concerns which I cannot ignore.

[64] As a result, I do not find that A.P's plan of care for S.P. is in her best interests and specifically I find that it is not in their best interest that she be placed in the primary care of A.P. at this time. That said, I will modify and expand his access and I find that supervision is no longer required.

M.H's Plan

[65] M.H. is the father of D.H., S.H. and K.H and all three of his children remain in the care of their maternal grandmother, F.C..

[66] M.H.'s plan before this Court is to have a day-to-day care of D.H., S.H., and K.H., that A.C. have supervised access with the children every second weekend with F.C. being the supervisor and that F.C. have reasonable access on reasonable notice. He proposes that the supervision for A.C. remain until the Agency is satisfied that she is met all the terms and conditions of the MOU.

[67] He further submits that he will facilitate contact between his three children and S.H. to maintain a sibling relationship.

[68] To his credit, M.H. has maintained employment through his adult life and is been a stable person in general terms.

[69] As well, to his credit M.H. has demonstrated a certain commitment to his children. He relocated from Halifax area to Pictou County to reside with F.C., at her invitation, to assist her in parenting the children. He moved in on August 12, 2015, and moved out on November 4, 2015, and assisted A.C. throughout that time in a parenting role. During that time he was neither employed nor had his own accommodation.

[70] During that time he not only secured employment but also secured an apartment in Westville. After moving out of F.C.'s home in November 4, 2015, his personal circumstances certainly improved in the local area.

[71] Unfortunately, his apparent commitment to the children seems to wane at that time. While he had the opportunity to continue to be a parent of the children when not working and to assist F.C. in doing so, and while F.C. says she would have welcomed such help, I find that he did not do so. He exercised access with the children once per week and then by his own decision reduced that to once every two weeks.

[72] The evidence is that since November 4, 2015, M.H.'s commitment as a parent, given these unusual, even extraordinary circumstances, has not been consistent. In fact he has failed to even inquire or make arrangements with F.C. for overnight access as part of the transition plan and is therefore raised concerns in my mind respecting his ability to provide for his three children.

[73] As well the evidence was that prior to August his commitment to the children was lacking. He had not seem the children from June 20, 2015, until August of 2015. When A.C. had care of their children and he was attending NSCC, he did take the children for access but despite the obvious stress a mother would be under in parenting four small children alone, he made in inquiries of NSCC regarding child care nor any other steps to assist A.C..

[74] As well, the evidence was that he had only paid child support to F.C. of $125 since leaving her home on November 4, 2015, despite his evidence that he was working and saving for a car.

[75] I find overall his evidence does not demonstrate that he has a particular insight into the needs of his children including a true understanding of the time and financial commitments required of for them.

[76] He works full-time in his availability for the children is therefore limited. He has no family support in the local area, does not have a driver's license for transportation and is not have an effective plan respecting care of the children in his absence.

[77] Moreover, his testimony respecting his understanding of the stresses experienced by A.C. when she was parenting his three children on her own suggest to this Court that he does not have the insight required at this time to parent the children on his own in the circumstances. I do acknowledge that he loves his children and wants to do the best for them but he is yet to demonstrate the type of commitment that would be expected of the father, particularly when faced with an opportunity to step forward throughout these proceedings and especially after he left the home of F.C.. He's failed to do so in a meaningful way though I think that his proposal for parenting plan is heartfelt and well-meaning. I therefore do not find that his plan will satisfy the best interests of the children.

Plan of F.C.

[78] F.C. is the maternal grandmother of all four children. Since August, 2015, she has been the primary caregiver for all four children in her home with her partner. There is no evidence before me to suggest that the children are at risk in any respect in her care and all of the evidence suggests that the children are thriving in her home. The Agency has endorsed this placement of the children with her and remain of that view.

[79] There are, however, concerns have been raised respecting F.C.'s ability to continue to parent these children in their best interest. These concerns largely centre around her relationship with and alleged lack of insight into the concerns about her daughter, A.C.. Counsel quite correctly point out that F.C.'s position has varied in this proceeding. Initially and now she supports the plan of care of her daughter, A.C. and offers her home and plan of care for the children reside with her as an alternative. That said, at the hearing, when pressed, she indicated that she wished her plan of care to be considered as her primary plan. I find that this is an understandable conflict that she feels. On one hand, she would like the children to reside with their mother but, I believe, also appreciates that this may not be possible. I believe that as she does not want to be seen by her daughter as usurping the mother's role in the long term but has demonstrated quite clearly by her commitment to take care of these children since August, 2015, that she is a willing and able to do so now and in the future. To put it another way, I interpret that part

of her evidence as a hesitation and that she needs permission or authority this Court to do so if appropriate.

[80] Other concerns identified respect the living arrangements for her, her partner and the children. The evidence is that she lives in a two bedroom mini home and the four children all sleep in one bedroom. She acknowledges this not an ideal situation.

[81] Respecting that evidence, I find that though this is certainly not ideal, it is also true that her that there are many families where children share bedrooms and though smaller families now permit children have their own rooms on a regular basis, many families do not. It is not in the distant past when it was quite common for two, three or four children to share a room. I'm not particularly persuaded by the argument that these are tight quarters and the children were sharing a room as evidence that this living arrangement is inappropriate for those children. Whether it is sustainable into the future may have to addressed at a later point.

[82] Respecting the length of time the children may be in her care, that may be subject to further review as matters evolve. It is possible that at some future date the children may come into A.C.'s care or M.H. and A.P. make take primary care of their respective children. But at this stage I can only assess what I believe to be in the children's best interests based on the evidence before me.

[83] There is evidence that F.C. and her partner, S.C., have used marijuana but it was her evidence that she hasn't used marijuana in at least one and possibly two years. There is evidence that she does consumed some alcohol as does her partner but I find that there was nothing to indicate that their current consumption of alcohol as described nor the past use of marijuana has impact on their ability to care for these children.

[84] The evidence is that she and her partner work full-time. She works Monday to Friday from approximate 6:00 a.m. to either 2:00 or 4:00 p.m.. Her partner works either Monday to Friday, Tuesday to Thursday and then Saturday to Sunday. As a result, the children are with the sitter for the periods of time she and S.H. I work. I do not find that this is particularly unusual nor contrary to the best interests of the children. Particularly with respect to M.H.’s plan of care for his three children, there's no doubt that he would have the children in a child care when he works for significant periods of time as well.

[85] The most concerning aspect of the evidence is F.C.'s apparent lack of insight into A.C.'s ongoing drug use and the risks that it poses. She was able to identify drug use as a concern of the Agency but wasn't able to identify the surrounding issues of neglect nor A.C.'s domestic abuse allegations and related issues.

[86] There is also evidence of an incident in which F.C. failed to supervise A.C.'s time with the children in the Walmart parking lot in September, 2015. This was contrary to a court order requiring supervision of any access by A.C. with the children.

[87] Finally, the evidence was that F.C. was unaware that A.C. continue to use drugs when she was prohibited from doing so and did so during times when A.C. testified she was not using. Put simply, F.C. was unable to detect drug use by A.C. from May, 2015 to December, 2015. It is a legitimate concern to raise the children remain in her care and A.C. is to have access.

[88] On the other hand, there is no evidence to suggest, nor has anyone represented to this Court, the F.C. deliberately ignored drug abuse by her daughter, simply that she was unable to identify the symptoms of such drug abuse.

[89] That said, I do find that F.C. has demonstrated an ability to take into account the best interests of children with her abilities. She has demonstrated by her care of the children and the lack of any issues arising from the care that she is able to address their physical, emotional social and educational needs. She has provided stability and safety. She has looked after the children who ranged from ages of three to seven in a way that, by all evidence, it has taken into account their age and stage of development.

[90] As well, she has clearly demonstrated a willingness to support the development and maintenance of the children's relationship with each of the parents. She in fact invited M.H. into her home to care for his children and placed no barriers on his access to them. She is not denied access for A.C. and has abided by the court orders put in place. Her supervision of A.C. has been inadequate both on the occasion at Walmart and in terms of identifying drug issues during access but I will address that in the moment.

[91] I've considered the history of the care of the children and in particular the care since coming into the home of F.C. as well as all of the competing plans of care.

[92] I do note that M.H.'s children are biracial and M.H.'s evidence in cross-examination was that this was not an issue in his mind and had no concerns about their upbringing in the home of F.C.. I therefore find that F.C. has addressed or at least not negatively affected the circumstance of the children in this regard.

[93] There's no doubt that there is a strong and stable loving relationship between F.C. and the children just as there is a strong and loving relationship among all of the parents and their respective children. What is striking is that though F.C. finds herself in the middle of a very difficult family situation, she has demonstrated an ability to cooperate with all of three parents in the best interests of the children.

[94] Finally I do take into account the allegation of the history family violence between A.C. and A.P. but I am not able to conclude on the evidence that that is a relevant factor in the circumstances,

[95] Finally I have considered the issue of sibling relationships. The four children in the care of F.C. have been through much in the last few years. I infer from the evidence that they get along well and there have been no issues identified in their relationships. If I accept M.H's and/or A.P's plan, the children will be separated. I do acknowledge that the fathers have argued that this is not a significant issue as they have spent much time part during access and will spend time together through the father's cooperation. But I do find that maintaining this sibling relationship in one home is important.

[96] It is trite to say that sibling relationships are important. They can provide the stability and support to each other in subtle and overt ways during difficult times. Just having your siblings around you each day can be stabilizing and supportive to any child. I am reluctant to change that dynamic at this time for these children.

[97] I have no doubt that they could cope with this change and there is nothing to suggest that S.H. does not get along well with L.M.'s children. But they are not her siblings and I find that such a change would be in her best interests.

[98] As a result, I find that it is in the children's best interest that they continue to reside with F.C..

[99] There will be a joint custodial order for D.H., S.H., and K.H. granting joint custody among F.C., A.C. and M.H.. With respect to S.P., there will be a joint custodial order among F.C., A.C. and A.P..

[100] Within each joint custodial arrangement, each of the parties will have full access any information or materials from any third party service provider including, but not limited to, physicians, dentists, therapists, child care providers, schools and teachers and each of the parties may attend any significant event or appointment concerning the children. They will keep each other aware of all such appointments as far in advance as possible.

[101] They will meaningfully consult on any major issues concerning the best interests and well-being of the children and attempt to reach an appropriate decision reflecting the best interests of the child or children. In the event there is a disagreement on a significant issue among the parties, the final decision-making authority respecting the best interests of the children will reside with F.C. and each of the other will have the right to bring the matter before the court for review.

[102] As to access, both A.P. and M.H. will have access with their respective children every second weekend from Friday at 5:00 p.m. to Sunday at 5:00 p.m. commencing this weekend. Each of the fathers will have the children with them for a further overnight visit each Wednesday at 5:00 p.m. to Thursday morning when the children are dropped off at school, daycare or the home of F.C. as agreed.

[103] The following special access times will override the access described above for special occasions. Specifically:

[104] For Christmas, the parties shall share the school Christmas break approximately equally between them. The parties can agree to an access schedule that accomplishes but if they cannot agree, one party will have the children from the end of school and the commencement of the school Christmas break until Christmas day at 2:00 p.m. the other party will have the children from Christmas day at 2:00 p.m. until the children returned to school in January. It is acknowledged that not all of the children are in school but the access schedule will apply as if they were in accordance with the school break schedule. This schedule will rotate every year thereafter unless otherwise agreed.

[105] Each of the fathers will have their respective children on Father's Day from 9:00 a.m. to 5:00 p.m. even if it is not the regularly scheduled access weekend.

[106] Easter, which include the evening of Easter Thursday through to the evening of Easter Monday, will be divided approximately equally between the parties and if they can agree that access schedule will apply. If they cannot agree, one party will have the children from Easter Thursday at 5:00 p.m. until Easter Saturday at 5:00

p.m. and the other parties will have the children from Easter Saturday at 5:00 p.m. until Easter Monday at 5:00 p.m.. This access schedule will rotate each year unless otherwise agreed.

[107] There will be no special access for the children's birthdays as they can be celebrated by the other party when the children come for access before or after the child's birthday.

[108] For school spring break the normal access schedule shall apply unless agreed to among the parties.

[109] During the summer school break, the normal access provisions will apply with the exception that each of the parties, and that is the two fathers and F.C., may have access with the children for two, one-week periods of block access for vacation. Each of these parties will exchange by email a propose a schedule by May 1st of each year and if there's no conflict, that access schedule will apply. If there are conflicts, the parties cannot resolve the matter, F.C.'s proposal for summer access will have priority in the first year, M.H.'s will have priority in the second year, and A.P.'s will have priority in the third year.

[110] There will be other access as agreed on a reasonable basis among the parties.

[111] All access will be unsupervised for M.H. and A.P..

[112] With respect to A.C., her access will continue to be on a reasonable basis as agreed between her and F.C.. That said, all such access will be supervised by F.C. at all times. She will ensure that A.C. is not alone with the children at any time under any circumstances. If F.C. suspects, or becomes aware that A.C. is under the influence of alcohol or any illegal or non-prescription substance or a prescription medication that is not properly prescribed for A.C., she will immediately terminate that access and report this to the Agency.

[113] F.C. will seek out assistance from the Agency, Addiction Services or other appropriate service providers to obtain an education in identifying signs of addiction or drug consumption or influence so that she is better equipped to identify the present drug use in another person. She will also seek out a program of education on the impact of the use and abuse of drugs and alcohol on families. She will make those inquiries within 10 days of today's date and will seek to start that training if possible within 30 days.

Child Support

[114] A.P.. currently pay child support to F.C. based on an imputed income of $23,000 per year at a rate of $174 per month payable as $80 bi-weekly. He testified that he is satisfied to continue to pay that amount even though his current income may be below $23,000. The order will contain that provision and the payment will continue to be to F.C..

[115] M.H. says he is now working full time as a sale representative with a local company, […]. His income is $26,000 per year plus commissions and he works Monday to Friday from 8:00 a.m. to 4:00 p.m. or 9:00 a.m. to 5:00 p.m.

[116] He also worked at the […] and had earnings to year to date earnings of $2,088 in 2016.

[117] He has paid $125 total child support since leaving the home of F.C. on November 4, 2015. If any support has been paid since that time, he will be credited with those amounts. He also has what he describes as a hobby promoting local bands. He claims he makes no money from this. The imputed income for M.H., including commission is $30,000 per year rendering a child support amount of $586 per month, payable semi-monthly on the 15th and 29th of $293, retroactive to February, 15th and 29th, 2016, payable every month thereafter. M.H. will receive credit of three payments of $293 for a total of $879, and be applied to the retroactive amount. The retroactive amount should be paid within 30 days.

[118] A.C. is on Social Assistance and below the threshold for paying child support, however, if and when her circumstances change, she must notify F.C. immediately and at that point, voluntarily pay the correct amount of child support, but if not voluntarily, F.C., may make application for that amount to be paid.

[119] If there is any change in the employment or income circumstances of any of the persons required to pay child support, F.C. is to be notified immediately of the details of the new, or changed position and the new, or changed income and she can determine if she wishes that to be adjusted, which can be done by agreement.

[120] A.C., M.H. and A.P. will disclose annually by June 1st, a copy of their full tax returns with all attachments and notices of assessment. At that point, F.C., can decide whether to apply for a change in child support.

[121] F.C., or any of the parties paying child support, may register the order with the Director of Maintenance Enforcement for enforcement of those amounts.

[122] The Child Tax Benefit is for the benefit of the children and is to be paid to F.C. on a go forward basis.

[123] There are to be no social media postings whatsoever, in whatever form, respecting these proceedings.

Timothy G. Daley, JFC