FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. M.L.*, 2020 NSFC 1

Date: 20200113
Docket: FKCFSA 111316
Registry: Kentville, N.S.

Between:

Minister of Community Services

Applicant

v.

M.L. and W.H.

Restriction on Publication:

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

Section 94 (1) provides:

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

Judge: The Honourable Judge Jean M. Dewolfe

Heard: November 4, 2019 and November 6, 2019, in Kentville, Nova Scotia

Written Submissions: November 20, 2019 for the Respondents
December 4, 2019 for the Applicant

Counsel: Cynthia Janes, for the Applicant
Marc Charrier, for the Respondent, M.L.
Maggie Shackleton, for the Respondent, W.H.

By the Court:

Introduction

[1] This is an application by the Minister of Community Services ("the Minister") seeking permanent care and custody of two children, T., age 5 and K., age 3 ½ pursuant to the *Children and Family Services Act* ("the Act"). M.L. is the children's mother, and W.H. is their father.

[2] The parents seek return of the children to M.L.'s care, with the father, W.H. having access and playing a supportive role.

Background

[3] The Agency has been involved with M.L. since prior to T.'s birth. The Minister was aware that she had a history of violent behaviour, alcohol use, drug use, and domestic violence. After T.'s birth, the Agency also received referrals regarding W.H.'s drug use and violence, unsafe living conditions, a missed medical appointment for T., and concerns regarding T.'s feeding. The parents voluntarily engaged in services and the Agency file was closed in September 2016.

Current Involvement

[4] On August 11, 2018, M. L. was involved in a motor vehicle accident and was found to have alcohol in her system. She was in the company of D.A., who has a history of drug use and child protection concerns. M.L. had an interlock system in her car to prevent her from drinking alcohol and driving. Therefore, at the time of the accident, she had been driving D.A.'s car, while D.A. drove T. & K. in her vehicle.

[5] A social worker attended at M.L.'s home on August 22, 2018 and August 23, 2018. She noted excessive clutter and garbage in the home, and a pet snake. She removed a lighter from K.'s mouth (age 2 at the time). Neither child was responsive to the worker or verbal.

[6] M.L. admitted she had used cocaine with D.A. and had consumed " a couple" of beer and some wine on August 10, 2018 after the children were in bed. She also admitted to using cocaine and having a glass of wine on August 11, 2018, prior to the accident. She acknowledged that she had allowed D.A. to drive the children in her car (and she took his car to avoid the interlock system), despite the fact that he had used cocaine and ingested alcohol.

[7] M.L. appeared to have no insight into the risk posed to the children by her actions.

[8] The children were removed from M.L.'s care on August 23, 2018 and placed with their paternal grandmother. She struggled to meet the needs of the children. On October 24, 2018, the children were placed with their maternal aunt, who also struggled to meet the needs of the children. In January 2019, the children were placed in the temporary care and custody of the Minister. They have resided together in foster care for almost a year, and have had supervised access with their parents.

The Children

[9] The children present with significant needs. T. has been diagnosed as having "global developmental delays", and is undergoing an assessment with respect to Fetal Alcohol Spectrum Disorder (FASD). Both children have been engaged in speech therapy, early intervention, and occupational therapy. In addition, T. receives physiotherapy, and is followed by her family doctor and seven specialist doctors. K. is followed by his family doctor and two specialist doctors.

Evidence

The Minister

[10] The Minister entered a Book of Reports. The following Reports were admitted by consent.

Reports

Dr. Alison MacLeod

[11] Dr. Alison MacLeod, pediatrician, prepared a report with respect to T.'s birth and postnatal issues in January 2015. She noted M.L. had had limited prenatal care. She observed that T. was small for her gestational age (full term); at risk for "neonatal abstinence syndrome", and having "suble [sic] facial dysmorphism with asymmetric jaw…" She described T.'s "sudden clinical deterioration" after birth which resulted in her being airlifted to the IWK, and subsequent tracheal stenosis diagnosis.

IWK Discharge Summary

[12] The Minister provided T.'s IWK Discharge Summary dated 12 February 2015 (signed by Dr. Derek MacDonald and Dr. Tania Wong), which

reported that T.'s tracheal stenosis had been repaired, cardiac defects had been detected and assessed, and T. had been treated for withdrawal from methadone. Concerns were noted regarding T.'s dysmorphic features and congenital contractures in her arms and legs requiring physiotherapy and medication. T. was discharged requiring "follow up with multiple services".

The Perinatal Follow-Up Program

[13] The Minister entered a report from The Perinatal Follow-Up Program at the IWK dated August 22, 2018 with respect to T.

[14] This report described her lengthy medical history beginning at her birth. She was born with a severe airway abnormality which required surgery, and developed seizures. She required treatment due to maternal use of methadone. Multiple medical problems and anomalies including "facial dysmorphism", congenital heart disease and "contractures" were identified. They noted global developmental delays of approximately one year. The report described the extensive medical interventions and follow up required for T.

Christine Ellsworth

[15] Christine Ellsworth, IWK psychologist, assessed T. in September 2018, regarding her cognitive abilities, frequent tantrums and overall behaviour. T. had been referred by various professionals at the IWK. Dr. Ellsworth assessed T. at age 3 years, 9 months as having delays in most areas: cognitive skills at a 2 year, 5 month level; receptive communication and fine motor skills at a 2 year, 7 month level; and expressive communication skills at just below the 12 month level.

[16] She recommended speech/language skill development, early intervention, occupational therapy, and physiotherapy and emphasized that T. needed a bedtime routine, and assistance with toilet training. She also recommended that T. be followed by her pediatrician and the PPPS team (Pediatric Preschool Psychology Service).

Linda Levy Fisk

[17] Linda Levy Fisk provided speech therapy to K. and T. in 2019. She noted in September 2019 that the "intelligibility" of K.'s speech was 75% of that which was expected for his age. T., who was 4 years and 3 months of age at that time, had an equivalent language acquisition of 18 months.

Lisa Doner

[18] Lisa Doner prepared occupational therapy reports on both K. and T. in February 2019. With respect to T., she noted that she. has "… challenges in the areas of fine motor, sensorimotor, self-care, school readiness skills, speech, play and visual motor integration." She recommended occupational therapy activities and ongoing sessions as well as physiotherapy, speech therapy, an optometry assessment. She felt a FASD assessment should be explored for T.

[19] With respect to K., she noted "challenges in the areas of sensorimotor skills, play, visual motor integration and speech." She recommended a speech assessment, OT exercises for K. and ongoing OT appointments for him.

Dr. Andrew Warren

[20] Dr. Andrew Warren, Pediatric Cardiologist, saw T. in July 2019 at the IWK. He indicated that "no intervention was required at this time", but he would reassess her in two years' time.

Sarah Atkins

[21] Sarah Atkins, physiotherapist, provided a report dated July 3, 2019 in which she described T. as a “four year old girl with fetal alcohol syndrome”. She diagnosed gait dysfunction and decreased strength in core/lower extremity. She recommended an orthotic assessment, and physiotherapy sessions to help establish a home exercise program to work on balance and gait retraining.

Trevor Moores

[22] Trevor Moores, counselling therapist, provided counselling to W.H. in 2018 and 2019. He reported that W.H. had attended counselling regularly and seemed fully engaged. He noted that W.H. had spoken about his own traumatic life experiences. Mr. Moores also conducted couples counselling for W.H. and M.L. He noted they seemed highly motivated and had insight into past mistakes.

Dr. Gosse

[23] Dr. Gosse provided psychiatric assessments with respect to M.L. dated March 15, 2019 and August 30. 2019, and acted as a consultant for M.L.’s

counsellor, Ian Smith and Sheila Bower-Jacquard, the psychologist who prepared a Mental Health Assessment Report with respect to M.L. in August 2019.

[24] Dr. Gosse summarized his findings with respect to M.L. as follows: (p.6 of his report)

> "…(M.L.) comes from a very difficult and dysfunctional background and also herself has had a difficult adult life with problems with addictions and chaotic life situation as noted above."

[25] He also noted:

> I suspect there is significant codependency in the relationship (with W.H.) and (M.L.) does not appear to have many other separate supports…

[26] Dr. Gosse diagnosed M.L. as having an anxiety disorder, aspects of post traumatic stress symptoms and opioid use disorder "apparently in sustained remission on maintenance methadone therapy". He recommended weekly psychological treatment, CBT type, focusing on anxiety and post traumatic issues, with secondary emphasis on "relationship issues, self-esteem and self

identity issues", as well as possible couples counselling. He also suggested restarting pharmacological treatment if her symptoms worsened, and implementing random drug tests.

Expert Witnesses

Sheila Bower-Jacquard

[27] Sheila Bower-Jacquard, registered psychologist, was qualified as an expert in the field of psychology, including completing psychological testing and mental health assessments. She completed a psychological assessment with respect to M.L. in September 2019. She testified and was questioned on her report by counsel.

[28] Ms. Bower-Jacquard described M.L. as having difficulty trusting people and a tendency to think negatively of others. She indicated that M.L. did not identify a lot of support except for W.H.

[29] In her report, Ms. Bower-Jacquard described M.L.'s childhood as follows: (p.17):

> (M.L.) recalled prevalent mental illness and substance abuse concerns with her biological parents; alcoholism ran on both sides of the

> family. M.L. has had a very abusive, chaotic childhood that likely created significant disruptions in her development, which probably greatly contributed to the issues in her adult life. She has used maladaptive methods of coping, which have led to significant problems in her life, probably including addiction issues. Her childhood seems to have led to attachment issues for her in that she is not able to trust, which greatly interferes with one's ability to develop and nurture relationships. Consistently Dr. Gosse describes that her past trauma and current symptomology is likely impairing her overall psychosocial functioning …. It is my sense that she has a great deal of emotional healing to do.

[30] Ms. Bower-Jacquard recommended:

- Therapy to address her past trauma, along with therapy to enhance her low self-esteem, enhance coping skills and self regulation skills, improve her ability to trust others, enhance healthy relationship skills, (problem solving and conflict resolution) reduce symptoms of anxiety and depression, reduce her hopelessness, helplessness, tendency to self-blame, and criticize herself, and monitor her substance use ensuring she has a good understanding of her patterns;

- continue to attend couple counselling with W.H.

Ian Smith

[31] Ian Smith provided three interim reports and two missed appointment notices. He testified and was cross examined. He was qualified as an expert in mental health counselling and therapy.

[32] Mr. Smith has provided counselling to M.L. since early 2019.

[33] Mr. Smith described M.L. as engaged in counselling. In his July 9, 2019 report, he indicated that M.L. had disclosed a "background of childhood trauma, and attachment issues, and adult substance abuse…". In Mr. Smith's opinion M.L.'s substance use was "correlated to her childhood experiences". He noted an inability to regulate her emotions.

[34] In his testimony Mr. Smith elaborated on these adverse childhood experiences. He noted that M.L. had grown up in a dysfunctional home in which the parents were abusive, neglectful, and inconsistent. As a result, M.L. turned to substances to "self medicate" the anxiety she felt, and her ability to self regulate her emotions had been damaged. He noted that her

childhood upbringing left her with social anxiety and without life skills such as time management.

[35] Mr. Smith described his work with M.L. as being primarily focussed on life “skills training” and processing her complex traumatic experiences. He planned to engage with M.L. in “EMDR” (eye movement de-sensitivity reprocessing) therapy, followed by Cognitive Behaviour Therapy (CBT). Mr. Smith was concerned that M.L. needed a supportive home environment in order to continue with these therapies, and he was concerned that this might not exist.

[36] Mr. Smith was of the opinion that M.L. has made “huge progress”, loves her children, is motivated to change and has the potential to address her anxiety, emotional regulation and complex trauma induced conditions. However, this would take at least 3-4 months of additional work, and that at this time she should not have children in her care. He was hesitant to give a time line as complex trauma is a “severe mental health issue”, which individuals require the “proper tools” and support to work through. He felt that M.L.’s admitted one time use of Xanax was not an addictions “relapse” but rather a poor coping method as a result of overwhelming anxiety. He also expressed his

opinion that without further treatment, M.L. would continue to make poor choices in response to her anxiety.

[37] Mr. Smith has agreed to see M.L. on a *pro bono* basis for as long as she wishes.

Social Worker

Lael Aucoin

[38] Lael Aucoin is a long-term social worker who worked with the Respondents during most of the proceeding.

[39] She identified five Affidavits which she had sworn and filed throughout the proceeding, as well as the Affidavit of Kelsie Maloney, the intake social worker who had initially dealt with the Respondents.

[40] Ms. Aucoin also identified the Plans of Care filed by the Minister dated January 29, 2019 and July 4, 2019. The first Plan of Care proposed that the children continue in the temporary care of the Minister with services and supervised access to the Respondents. The second Plan of Care proposed permanent care and custody citing the failure of services to alleviate the protection concerns. This plan proposes that both children be placed for adoption.

[41] Ms. Aucoin also identified Family Support Worker, Beth Roberts' case recordings, and a book of texts between Beth Roberts and M.L.

[42] Ms. Aucoin's and Ms. Maloney's respective affidavits detail the family background, the progression of the proceeding and the Minister's interactions with the Respondents, the third-party family caregivers, the children's medical professionals and the foster parents.

[43] Ms. Aucoin described T. as having a difficult start in life with multiple cardiac defects, seizures and difficulties breathing. As a result, she was sent to the IWK and experienced 28 days on ventilation as well as multiple operations. She has had 12 operations in her short life and is followed by multiple specialists. She also receives various services such as physiotherapy, speech, and occupational therapy. She is 5 years old, but only weighs 32 pounds. She is trying to talk but is still essentially non-verbal. She does communicate somewhat through an iPad.

[44] T is now in Grade Primary and is able to take the bus to school. The school has a sensory room she can use. She attends swimming and horse back riding lessons. She attends an after-school program at the same daycare which K. attends.

[45] K. too had a difficult start, and experienced respiratory distress. He has speech difficulties but is making huge progress. K. has a kidney condition requiring medication and a prophylactic. He is not yet toilet trained. When the children were taken into care the Minister was not aware that K. was on any medication, and only learned of this from the foster parent following a doctor's appointment.

[46] Neither child was up to date with immunizations when they were taken into care.

[47] Both children were supported after birth for methadone withdrawal.

[48] T. and K. were initially placed with "highly skilled" foster parents, who later became respite foster parents. The children are doing well in their current foster home.

[49] T. is currently being assessed for FASD. There are concerns that M.L. drank alcohol while pregnant, and T. has dysmorphic facial features.

[50] T. requires extensive dental work (fillings and caps), due it appears, to being put to bed with a bottle.

[51] Ms. Aucoin described gaps in health care for the children due to missed appointments while they were in the Respondents' care. As a result, new referrals were required for physiotherapy and occupational therapy. Also, M.L. had not followed through with the Early Intervention Program.

[52] Ms. Aucoin introduced a letter to Dr. Andrea Mossman from Dr. Peter Anderson of the IWK dated December 20, 2017, in which he notes that T. and K. had been "no shows" on 3 occasions for urology specialist appointments.

[53] Regular attendance for appointments and services during this proceeding was challenging for the Respondents.

[54] M.L. did not attend her initial appointment for a psychiatric assessment with Dr. Gosse in January 2019. She also missed her first assessment with Sheila Bower-Jacquard despite Ms. Aucoin's offer to drive her there. This significantly delayed this assessment.

[55] Ms. Aucoin testified that M.L. initially attended appointments for the children with Early Intervention, but that these were not attended in the spring of 2019. M.L. did not attend the first speech therapy appointments for the children or ask to attend later appointments. M.L. and W.H. did not

attend T.'s school meeting, or the children's IWK specialist appointments despite Ms. Aucoin's offer to drive them.

[56] The Respondents were asked to participate in the children's medical appointments in the spring of 2019. The Respondents experienced family violence in May 2019. Both Respondents disengaged with services for a period of time around that time and failed to even attend visits for several weeks.

[57] During the summer of 2019, Ms. Aucoin was aware that M.L. had missed appointments and had had a falling out with Mike Cameron from Kings County Resource Centre.

[58] Ms. Aucoin noted in her Affidavits and in her testimony that M.L.'s failure to respect boundaries contributed to the breakdown in the children's respective placements.

[59] Ms. Aucoin was not aware that M.L. and W.H. had completed an Anger Management Program with Kids Action Plan in October 2019. She testified that this would not cause the Minister to reconsider its position.

[60] Ms. Aucoin noted that family support work with Beth Roberts finished mid-March. Ms. Roberts' case notes from November 2018 show positive

interactions between Ms. Roberts and M.L. Ms. Aucoin indicated the Agency planned to have Ms. Roberts support M.L. during the transition of the children back to M.L.'s care.

[61] Ms. Aucoin indicated that M.L. had told her that between May and October 2019, she used Xanax on more than one occasion, which she had obtained from her mother's boyfriend.

[62] Numerous text messages sent to Ms. Aucoin from M. L. consist primarily of complaints and show very little self-awareness. M.L. was noted to be "escalated", confused, and dysfunctional, particularly in the spring of 2019. These emails caused the Minister to have concerns with respect to M.L.'s emotional regulation and mental health.

[63] Ms. Aucoin expressed concern that M.L. still has significant goals to accomplish in therapy and could regress or take significant time to complete these goals. She also expressed concern about M.L.'s inability to plan, problem solve and follow through given that M.L. and the children will need continued multiple health related appointments.

[64] Ms. Aucoin testified that while M.L. had made progress on her mental health issues in the last 2-3 months, the Minister does not believe this is sufficient

to allow the Minister to safely return T. and K. to M.L.'s care. Ms. Aucoin indicated that the Minister would need to see stability for at least 6 months, considering the children's high needs.

[65] In Ms. Aucoin's opinion, M.L. does not have a thorough appreciation of her children's needs, and is not realistic in her belief that she can parent these high needs children while managing her own mental health.

Mike Cameron

[66] Mike Cameron is a Parenting Journey home visitor with Kings County Family Resource Centre, who worked with M.L. in 2019. He provides support and advocacy for parents and connects them to services.

[67] He identified a letter dated July 17, 2019 (attached as Exhibit "B" to M.L.'s Affidavit, dated October 21, 2019), which described his involvement with M.L. and M.L.'s involvement with the Parenting Journey Program between September 2018 and July 2019. He noted that she was willing to learn skills such as "mindfulness, self-care, budgeting, family life management, communication and future family goals." He indicated that she participated fully in programming.

[68] Mr. Cameron testified that M.L. had been moved to another home visitor in the summer of 2019 when she became upset with him after being unable to reach him while he was on vacation.

Respondents' Evidence

M.L.

[69] M.L. provided an Affidavit dated October 21, 2019, in which she states that she has the ability to care for the children. She resides in a 3-bedroom apartment in Kentville.

[70] She indicated that she has not used drugs (except methadone) since August 2018. However, she has admitted to using Xanax to Mr. Smith and Ms. Aucoin.

[71] She states that she took the children to "all their appointments" prior to Agency involvement. This is clearly not correct in light of the letter from the IWK neurologist (Ex. 6), and Ms. Aucoin's testimony.

[72] On cross examination, she admitted that while she and W.H. had done their best to never miss appointments, she "couldn't manage it all". M.L. testified that she had not returned to T.'s pediatrician because she felt the staff were

"mean" to her and the doctor didn't "like" her, and therefore, she wanted a new pediatrician.

[73] M.L. admitted that she had found it difficult to arrange transportation. When asked how she planned to transport the children to appointments if they are returned to her care, she said that W.H. and family would help, that the children can now walk, take the bus or Kings Point to Point with her and that she is trying to get her license back.

[74] M.L. regretted the volume of emails she had sent to the Agency, which she described as "venting" in response to her frustration and worry about the children.

[75] M.L. indicated that counselling with Ian Smith has been helpful, and that she is reaching out more to community resources such as the Kids Action Plan. However, she testified that her work on self regulation and anxiety would "come second" to the children's needs if they are returned to her care.

[76] M.L. described W.H.'s mother, M.F., as a "liar", "delusional", and as having mental health problems. When asked why she had suggested M.F. as a placement for K. and T., she said she thought it would be for a few days, and

that M.F. had been doing “better”. M.L. admitted to calling the police on M.F. after an alleged assault on her.

[77] M.L. also admitted to a volatile history between herself and her sister with whom T. and K. had been placed.

[78] M.L. admitted she did not completely meet the needs of the children “all the time”, but indicated she and W.H. had tried, and she would try “a lot harder” if they were returned. She also felt that the children’s care would be easier now because T. was in school, K. in daycare and W.H. was available to help with transportation and to assist with the children’s care (although he did not have electricity in his home at that point).

[79] M.L. admitted she had not had “insight” into what was happening, and she therefore failed to engage in services fully. She also testified that the “pressure” got to her in April 2019 so that she needed to “step back to regroup”. She admitted to making mistakes when the children were placed with family, i.e. “constantly communicating with them about how to do things and always asking questions”.

[80] M.L. indicates she attended sessions at the Canadian Mental Health Association on her own initiative. She continues to be part of the Opiate Treatment Program, and attends Alcoholics Anonymous.

W.H.

[81] W.H. provided an Affidavit in which he stated that prior to Agency involvement in 2018, he had been working night shifts, 50-60 hours per week, leaving M.L. to essentially parent T. and K. on her own. He explained that he is currently unemployed, and would now have more time to assist M.L. in parenting the children, and to transport them to appointments.

Law

[82] The Court is required to make a disposition that is in the child's "best interest": s.42(1). The factors which the Court must address in reaching this determination are set out in s. 3(2):

> **Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:**
>
> **(a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;**
>
> **(b) the child's relationships with relatives; 1990, c. 5;**

(c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;

(d) the bonding that exists between the child and the child's parent or guardian;

(e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;

(f) the child's physical, mental and emotional level of development;

(g) the child's cultural, racial and linguistic heritage;

(ga) the child's sexual orientation, gender identity and gender expression;

(h) the religious faith, if any, in which the child is being raised;

(i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;

(j) the child's views and wishes, if they can be reasonably ascertained;

(k) the effect on the child of delay in the disposition of the case;

(l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;

(n) any other relevant circumstances.

S. 42(2) provides:

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 failed;
(b) have been refused by the parent or guardian; or
(c) would be inadequate to protect the child".

S. 42(3) states that:

Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for

temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether

(a) it is possible to place the child with a relative, neighbour or other member of the child's community or extended family with whom the child at the time of being taken into care had a meaningful relationship pursuant to clause (c) of subsection (1), with the consent of the relative or other person;

S. 42(4) provides that:

The Court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably unforeseeable time not exceeding the maximum time limits based on the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c.5, s.41.

[83] Past parenting history is relevant to the present circumstances: *N.S. Minister of Community Services* v. *L. (S.E.L.),* 2000 NSCA 55.

[84] The Court must be persuaded on a balance of probabilities that placement of T. and K. with M.L. continues to pose a "substantial risk", to the children, as defined by the *Act*. This test is aptly summarized by Jollimore J. in *N.S. (Minister of Community Services)* v. *S.C.* 2017 NSSC336, as follows: (para.35)

35**. "Substantial risk" is a real chance of danger that is apparent on the evidence: subsection 22(1) of the *Children and Family Services Act.* It is the <u>real chance</u> of physical or emotional harm or neglect that must be proved to the civil standard. That future physical or emotional harm or neglect will <u>actually occur</u> need not be established on a balance of probabilities: *MJB v. Family and Children Services of Kings County,* 2008 NSCA 64 at paragraph 77, adopting *B.S. v. British Columbia (Director of Child, Family and Community Services*), 1998 CanLII 5958 (BCCA"), at paragraphs 26 to 30.**

[85] The total duration for all disposition orders in this matter is twelve months, ie. February 6, 2020: s. 45(2). This deadline is fast approaching. There are no proposed family or community placements. Therefore, the court has essentially two options: return the children to the Respondents (possibly with a short period of supervision until February 6, 2020), or place the children in the permanent care and custody of the Minister.

ANALYSIS AND DECISION

Conclusion

[86] K. and T. are clearly children with high needs. M.L. and W. H. were unable to adequately meet those needs prior to the Minister's involvement. Numerous appointments were missed which put the children at significant risk of physical harm and impeded their development. M.L. stopped taking T. to see her pediatrician because she felt slighted by the doctor's office staff. Referrals for urology, occupational therapy, and physiotherapy lapsed due to missed appointments. M.L. did not follow through on Early Intervention for T., which was a crucial service for her.

[87] The Court accepts Ian Smith's evidence that M.L. suffers from anxiety and inadequate life skills due to her traumatic background and that M.L.'s

anxiety led to her reluctance to seek help, other than from W.H., with whom she has had a conflictual, chaotic relationship. Her inability to plan and organize her own life and that of her children also contributed significantly to her inability to meet her children's medical needs. The Court does not accept that the missed appointments were primarily due to a lack of transportation or poverty. Transportation resources existed, but M.L. could not adequately organize her life, or communicate with those resources to ensure that the children's needs were met.

[88] W.H. is unemployed now, but it is unclear how long he will be available to help transport the children. Also, relying on W.H. increases the likelihood of conflict between the parties, which would be damaging to the children. W.H. and M.L. have engaged in some couples' counselling, but I am not satisfied that this has been sufficient to significantly reduce this risk pending M.L.'s progress in her own therapy. M.L. is conflictual with others and cannot yet regulate her emotions. This is evidenced in her texts with the Agency, and her confrontation with W.H.'s mother, and is supported by Ian Smith's evidence.

[89] The fact that T. is in school and K. is in daycare adds another layer of responsibility, requiring coordination, communication, and cooperation.

[90] Mr. Smith's opinion is that M.L. cannot adequately care for children at this time, that she requires at least another 3-4 months of counselling with a supportive home environment. M.L. does not appear to have such an environment. She and W.H. are not residing together, and she lives alone. The court accepts Mr. Smith's opinion that if M.L. does not receive further counselling, she will expose herself to anxiety inducing situations.

[91] The court is troubled by M.L.'s lack of insight into the children's complex needs, and her inability to recognize and address the challenges ahead should she regain custody. Also, her pledge to put the children's appointments ahead of her own mental health work is concerning. She fails to recognize that without her own mental health work she cannot adequately parent these children.

[92] M.L. has made progress in addressing her mental health concerns, but I find that a great deal more progress is needed before M.L. can adequately parent T. and K.

[93] All reasonable services were provided and/or offered to M.L. She engaged in these services too late, and her needs were too severe. It is unsurprising that

she has failed to make sufficient progress to address the Minister's protection concerns.

[94] These children require a stable home, and consistent, high quality care to meet their complex, severe needs. The Court finds that M.L. cannot meet these needs now or within the statutory timelines. To return these children to M.L.'s care would expose them to a real and substantial risk of physical and emotional harm pursuant to S.22(2)(b) and (g) of the *Act*.

[95] Therefore, the children, K. and T. shall be placed in the permanent care and custody of the Minister.

Jean M. Dewolfe, JFC