SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
Citation: *Nova Scotia (Community Services) v. BM,* 2015 NSSC 145

Date: 05-12-2015
Docket: *Sydney* No. 87124
Registry: Sydney

Between:

Minister of Community Services

Applicant

v.

BM, NL and WM

Respondents

And

Docket: *Sydney* No. 78726

Between:

WM

Applicant

v.

BM and NL

Respondents

DECISION

Judge:	The Honourable Justice Theresa Forgeron
Heard:	December 1, 4 and 5, 2014; and January 2, 6, 16, and 21; February 18 and 20; March 5, 24 and 30; April 8, 23 and 27; and May 12, 2015 in Sydney, Nova Scotia
Oral Decision	May 12, 2015
Written Release:	May 13, 2015
Counsel:	Tara MacSween, for the Minister of Community Services Alan Stanwick, for NL Kimberly Franklin, for WM BM, self-represented

That s. 94(1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication. S. 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 a relative of the child.
>
> 1990, c. 5

By the Court:

[1] **Introduction**

[2] The life of four year old Ab will be forever altered by the child protection decision which this court must make. I have only two available choices. Ab must be placed in the permanent care and custody of the Minister, if Ab remains a child in need of protective services. If Ab is no longer in need of protective services, these proceedings must be dismissed. Ab's father, WM, would then be granted custody, with supervised access to her mother, NL.

[3] In deciding this case, the court will of necessity examine the protection issues personal to Ab's parents – those involving substance abuse and violence. In so doing, the court must also delve into the controversy surrounding the reliability of test results conducted by the Motherisk lab, and specifically on hair strands taken from WM and NL. The Motherisk lab is currently subject to a review, which was initiated by the Attorney General of Ontario, in the wake of the Ontario Court of Appeal decision of **R. v. Broomfield,** 2014 ONCA 725.

[4] The judgement which will be rendered today is a difficult and critical one because it involves the life and well-being of a vulnerable child, a child who deserves to be raised in an environment where there is not only love, but also safety, security and stability. In reaching my decision, I must analyse the evidence and submissions according to the statutory scheme set out in the *Children and Family Services Act*, and various case authorities, while focusing on Ab's best interests.

[5] **Issues**

[6] The following issues will be examined during the course of this decision:

- What law must be applied in a permanent care and custody hearing?
- What is the impact of past parenting evidence?
- What is the status of the relationship between WM and NL?
- Has NL resolved outstanding protection concerns?
- Has WM resolved outstanding protection concerns?

- Should Ab be placed in the permanent care and custody of the Minister?
- Should access be granted and under what terms?

[7] **Procedural Background**

[8] Before analysing the legal issues, the court will briefly review the child protection history involving four year old Ab.

[9] The agency was involved in Ab's life on two occasions. Ab was taken into care at birth in September 2010. The first child protection proceeding was terminated in January 2012 when the maternal grandmother, BM, filed an application under the *Maintenance and Custody Act*. The Agency supported BM's application. The *MCA* order placed Ab in the custody of BM, while supervised access was provided to NL and WM.

[10] On July 16, 2013, the Agency apprehended Ab for the second time, and the current child protection proceeding was commenced. Ab has remained in the care and custody of the agency since she was apprehended, while the respondents exercised supervised access.

[11] Interim hearings were held on July 23 and August 1, 2013. A protection finding, against NL and WM, was entered on October 16, 2013 pursuant to s.22(2)(b) of the *CFSA*. The first disposition review was held on January 7, 2014. Review hearings were further held on April 3, July 16, August 18, October 22, and November 3, 2014.

[12] WM and NL were represented by counsel throughout and faithfully attended the court proceedings. BM began to participate in the court proceedings on April 3, 2014. BM was repeatedly urged to retain legal counsel, but she remained unrepresented.

[13] Because the respondents did not consent to a permanent care and custody order, hearing dates were assigned on August 18, 2014. Ms. Franklyn, who represented WM, did not appear on that day. A docket review was scheduled for October 22, 2014; a five day trial was scheduled for November 27, and 28; and December 16, 17 and 18, 2014.

[14] During the October 22, 2014 docket review, Ms. Franklyn advised that she was not available on the scheduled trial dates because she was previously booked in other courts. Ms. Franklyn said that she sent a fax to this effect in September. Neither

counsel, nor the court, received Ms. Franklyn's fax. Ms. Franklyn conducted no follow-up. In the circumstances, the court was left to reschedule the permanent care hearing. There were only three dates that the court and counsel were available before the statutory deadline. A five day hearing was thus reduced to a three day hearing on November 3 and December 1, 2014; and January 2, 2015.

[15] The hearing, however, did not proceed on November 3 because of an unexpected death in the family of counsel for the Minister. In addition, the court and counsel were now available for the afternoon of December 4 and all day on December 5, 2014. These dates were also assigned for the hearing.

[16] The permanent care hearing began on December 1, with the following witnesses testifying: Constable James Penny; Constable Melissa MacDonald; Constable David Melski; Constable Jeffrey MacKinnon; Constable Steve Timmons; Judy Petite; Colleen Petite; Nicole Sheppard; Nadine Marr; and Donna Mikkelson.

[17] The hearing continued on December 4 and 5, 2014, with the following witnesses testifying: Joey Gareri; Dale Sharkey; NL, and WM.

[18] During the hearing on December 5, the court expressed concern that WM had not filed a *MCA* application for sole custody, with supervised access to NL, despite the fact that all respondents appeared supportive of WM's plan. Counsel for WM indicated that she would file the *MCA* application. The court advised her to do so immediately. In addition, the court requested the completion of further drug and alcohol testing.

[19] The permanent care hearing continued on January 2, 2015. WM's *MCA* application was not filed until January 2. All parties agreed that the evidence heard in the child protection proceeding would be applied to the *MCA* proceeding.

[20] The following witnesses testified on January 2: BM; BeM; and FB. As the hearing did not conclude, it was further scheduled to January 6.

[21] The following witnesses testified on January 6, 2015: MLD; MKM; and MM. In addition, counsel asked to recall WM to testify about his *MCA* application. The Minister objected. Written submissions were ordered and the matter was adjourned.

[22] The parties appeared on January 16, 2015 to secure further trial dates, at which time, counsel confirmed their availability on January 21, 2015.

[23] On January 21, 2015, the parties consented to WM and the Minister re-opening their respective cases. Joey Gareri and WM testified. In addition, WM sought a further adjournment because he had made arrangements, through his doctor, for an independent hair strand analysis. WM strenuously objected to the recent test results from the Motherisk lab. The trial was adjourned to February 18 so that WM could have testing conducted by another lab.

[24] On February 18, 2015, counsel for WM asked for a further adjournment because she had recently discovered that the lab which WM's doctor retained, in reality, used the Motherisk testing facility. The court was told that WM was working with his doctor to find another lab that was independent of Motherisk. The adjournment was granted.

[25] The court reconvened on February 20, 2015. WM, through his doctor, arranged for the completion of hair strand testing with an American lab – the Omega Lab. The hearing was therefore adjourned to March 5, 2015. The hearing did not proceed. Although test results had been circulated, no interpretation letter had been provided. The hearing was again rescheduled to the first available date, March 24, 2015.

[26] The hearing did not proceed as scheduled because of a problem with the video conferencing link, necessary to obtain the testimony of Dr. Engelhart. The court requested that counsel for the Minister assist WM's counsel with the video conferencing arrangements. The court appreciates the efforts of Ms. MacSween in having this procedural matter resolved.

[27] Testimony was concluded on March 30, 2015 after Dr. David Englehart was examined. The Minister, BM, and WM chose to file written submissions, to supplement their oral submission, which were provided on April 8, 2015. NL's counsel provided oral submissions. The court scheduled its decision for April 23, 2015.

[28] The April 23 date was interrupted because the Minister filed a motion to re-open its case on April 14, 2015. The respondents objected. Then, on April 20, 2015, NL also filed a motion to re-open her case. The Minister objected. Both motions were heard on April 23.

[29] On the evening of April 22, 2015, the court came into possession of a news release from the province of Ontario. In its release, the Attorney General announced that it had expanded the scope of the Motherisk review to include testing from 2010

to 2015; and to consider whether Motherisk adhered to internationally-recognized forensic standards. In addition, all children's aid societies were advised to stop using or relying on hair strand drug and alcohol testing, out of an abundance of caution. The court forwarded a copy of the news release to the parties, and asked that they be prepared to speak to its impact, if any, during the April 23 appearance, in addition to addressing the motions to re-open.

[30] On April 23, 2015, the court ruled on the motions to re-open. The Minister and NL were permitted to lead evidence that occurred after March 30, 2015. The Minister elected to call Myrchal Campbell who testified. NL opted not to lead any additional evidence.

[31] The court deferred its decision on the admissibility of documents involving Motherisk until April 27, 2015 because the Minister's position on the news release had not been fully canvassed. By correspondence dated April 24, 2015, Ms. MacSween confirmed the Minister's position. The Minister objected to the admission of the news release; the Minister continued to rely on the Motherisk test results.

[32] On April 27, the court ruled that the news release would be admitted as evidence. The Minister was given the option of recalling Mr. Gareri. The Minister chose not to do so stating that the obligation fell upon the Respondents. Mr. Gareri was not recalled. In addition, the court did not permit the admission of the March 5 letter or the newspaper article. Further submissions were received based upon the new evidence from Ms. Campbell. The decision was adjourned until May 12, 2015.

[33] This lengthy proceeding, involving 22 witnesses, and several thick volumes of evidence from prior proceedings, is now four months out of time, despite the fact that the permanent care hearing commenced about one month before the statutory deadline expired. The delay has troubled the court. The adjournments were not granted casually or carelessly. All adjournments past the statutory deadline were granted in the best interests of Ab, given the unusual circumstances of the case, and the scheduling difficulties which were encountered. Adjournments past the statutory deadlines are contrary to the usual practice of this court, but were unavoidable.

[34] **Analysis**

[35] **What law must be applied in a permanent care and custody hearing?**

[36] This is an application by the Minister to place the child, Ab, in the permanent care and custody of the agency with no provision for access. All respondents dispute this plan. They seek a dismissal of the proceeding with the child being placed in WM's custody, with supervised access to NL. BM no longer wishes to maintain a parental role; she simply wants to be a loving grandmother.

[37] The court has only two available disposition options at this stage, given that the statutory time limit has expired - a permanent care order or a dismissal: **N.J.H. v. Nova Scotia (Minister of Community Services)** 2006 NSCA 20, at para. 20.

[38] The Minister bears the burden of proof. It is a civil burden of proof based on a balance of probabilities. The Minister must present clear, convincing and cogent evidence: **C. (R.) v. McDougall,** 2008 SCC 53. I agree, however, with counsel for the Minister, that the phrase "clear, convincing, and cogent" does not create an additional or heightened layer of proof. Rather, the Minister must prove why it is in the best interests of Ab to be placed in the Minister's permanent care and custody in accordance with the legislation.

[39] In making my decision, I am mindful of the threefold legislative purpose set out in s. 2(1) of the *CFSA* - to promote the integrity of the family, protect children from harm, and ensure the best interests of children. The paramount consideration, however, is the best interests principle as stated in s. 2(2) of the *CFSA*.

[40] The *CFSA* must be interpreted according to a child-centered approach, in keeping with the best interests' principle as defined in s. 3 (2) of the *CFSA*. This definition is multifaceted. It directs the court to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, and social developmental needs, and those associated with risk of harm.

[41] The Minister relies upon s. 22(2)(b) of the *CFSA*. The Minister states that there is a substantial risk that Ab will suffer physical harm inflicted or caused by the parents' failure to adequately supervise and protect Ab. Substantial risk is defined in s. 22(1) of the *CFSA* as meaning a real chance of danger that is apparent on the evidence. In **M.J. B. v. Family and Children's Services of Kings County**, 2008 NSCA 64, Bateman, J.A. confirmed that in relying upon "substantial risk", an agency need only prove that there is a real chance that the future abuse will occur, and not that future abuse will actually occur, at para. 77.

[42] As the Minister is seeking to permanently remove Ab from the custody of her parents, s. 42(2) of the *CFSA* is invoked. This section confirms that the court must

not remove a child from parental care, unless less intrusive alternatives have been attempted and have failed, or have been refused by the parent, or would be inadequate to protect the child. The obligation to provide services is not without restrictions as noted by Flinn, J.A. in **Children's Aid Society of Shelburne (County) v. S.L.S,** 2001 NSCA 62 at para. 36.

[43] A permanent care hearing is the last of the disposition reviews. When a disposition review is conducted, the court assumes that the orders previously made were correct, based upon the circumstances existing at the time. At a review hearing, the court must determine whether the circumstances, which resulted in the original order, still exist, or whether there have been positive or negative changes, or whether new factual circumstances have arisen, such that the children are no longer in need of protective services: Section 46 of the *CFSA*; and **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.),** [1994] 2 S.C.R. 165, at paras. 35 to 37.

[44] In reaching my decision, I have considered the burden of proof, as well as the statutory scheme outlined and reviewed above. In making credibility findings, I have applied the law set out in **Baker-Warren v. Denault**, 2009 NSSC 59, as approved in **Gill v. Hurst,** 2011 NSCA 100. In addition, I have made inferences in keeping with the comments of Saunders, J.A. in **Jacques Home Town Dry Cleaners v. Nova Scotia (Attorney General)**, 2013 NSCA 4. My analysis has been conducted in the context of the evidence. I have also reviewed the oral and written submissions of the parties. I did not consider any factual information outlined in BM's submissions if the facts were not placed into evidence at the time of the hearing.

[45] **What is the impact of past parenting evidence?**

[46] *Position of the Minister*

[47] The Minister relies heavily on the past parenting of NL, WM, and BM to confirm ongoing child protection concerns. The Minister notes that all children of NL and WM have been the subject of child protection proceedings while the children were in their care.

[48] NL and WM have three children together, namely: Jo, Ab, and Ja. Jo and Ja have been placed in the permanent care of the Minister. Ab has spent her life either in agency care or in the custody of BM.

[49] WM's daughter MK was placed in the supervised care of the agency while she was living with WM and NL. The supervision order was dismissed once she returned to live with other family members.

[50] Je, Gl, and Mo are the older children on NL. Je and Gl were placed in the permanent care of the agency. Je eventually returned to live with NL, and at times was subject to supervision orders. Agency involvement with Gl ceased when she was placed in the care of her father. Mo was placed in the supervised care of the agency during the time that she lived with NL and WM. Agency involvement ended when Mo returned to live with her father and paternal grandmother.

[51] *Position of the Respondents*

[52] NL, WM and BM minimize the past parenting and prefer to focus on the present, and the goals which have been achieved.

[53] *Law and Ruling*

[54] Despite the contrasting positions of the parties, it is clear that past parenting evidence plays an integral role in child protection determinations. In **Nova Scotia (Minister of Community Services) v. G. R.,** 2011 NSSC 88, this court stated at para. 22, which provides as follows:

> 22 Past parenting history is also relevant. Past parenting history may be used in assessing present circumstances. An examination of past circumstances helps the court determine the probability of the event reoccurring. The court is concerned with probabilities, not possibilities. Therefore, where past history aids in the determination of future probabilities, it is admissible, germane, and relevant. In **Nova Scotia (Minister of Community Services) v. Z. (S.)** (1999), 181 N.S.R. (2d) 99 (N.S. C.A.), Chipman, J.A. confirmed the relevance of past history at para 13 wherein he states as follows:
>
> > [13] I am unable to conclude that the trial judge placed undue emphasis on the appellant's past parenting. It was, of course, the primary evidence on which he would be entitled to rely in judging the appellant's ability to parent B.Z. In **Children's Aid Society of Winnipeg (City) v. F.** (1978), 1 R.F.L. (2d) 46 (Man. Prov. Ct.) at p. 51, Carr, Prov. J., (as he then was), said at p. 51:

> ... In deciding whether a child's environment is injurious to himself, whether the parents are competent, whether a child's physical or mental health is endangered, surely evidence of past experience is invaluable to the court in assessing the present situation. But for the admissibility of this type of evidence children still in the custody of chronic child abusers may be beyond the protection of the court ...

[55] The parenting history of NL and WM is undeniably disturbing. Examples of this conclusion can be elicited from the previous child protection proceedings. I will now review relevant details.

[56] *2008 Contested Permanent Care Hearing*

[57] On July 4, 2008, this court placed 12 year old Je, 8 year old Gl, and 2 year old Jo in the permanent care and custody of the agency because child protection concerns surrounding violence and substance abuse had not been resolved. The order also granted NL access based upon the consent of the Agency.

[58] Examples of the concerns which triggered the protection proceeding include the following:

- In February 2007, Je and Gl left their home, in the early morning hours, when they were under WM's care, and walked down a dark road in a wooded area, and across a highway, to get to safety at their aunt's house located a few kilometers away. NL was not in the home at the time.

- NL was convicted of driving a vehicle while intoxicated on three occasions; two of the convictions were entered during the 2007 and 2008 child protection proceedings. NL was incarcerated for a brief period of time in 2008.

- NL was using cocaine and abusing alcohol. These addictions were not successfully treated.

- NL's relationship with WM was violent.

- Contact between NL and WM occurred despite NL advising that their relationship had ended in December 2007. For example, in April 2008, WM entered NL's home, and forcibly tipped over a table. NL cut her hand during this altercation.

[59] In its oral decision granting permanent care, this court made the following relevant findings:

- WM neither participated in services, nor in the court proceedings.
- Despite all experts acknowledging her love for her children, and a motivation to succeed, NL did not complete the required services to address the protection concerns. She was not consistent in her attendance at services with Mr. Burke, from Family Services of Eastern Nova Scotia, Ms. Brown from Addiction Services, and missed appointments with Dr. Landry, a psychologist, and Dr. Christians, a psychiatrist.
- NL was not consistent taking the medication that Dr. Christians prescribed to treat ongoing mental health illnesses.
- Because NL failed to complete services, she had not resolved many of the personal issues which confronted her, including attachment issues arising from her tumultuous and dysfunctional relationship with her mother; self-esteem and boundary problems arising from intimate partner violence; and a lack of appreciation of the effect of family violence on children.
- Because she did not complete services, NL failed to acquire the skills necessary to cope with the stresses and anxiety in her life in a healthy and responsible fashion. Addiction and relationship problems were found to be inevitable, despite NL's stated intention to remain substance free and to avoid violent relationships.

[60] *2010 Contested Termination Hearing*

[61] In 2009, the Minister sought to terminate access so that permanency planning could begin for Jo. In response, NL asked to terminate the 2008 permanent care and custody order. WM did not participate in these applications.

[62] On August 18, 2010, NL's application to terminate was denied; the Minister's application was granted. This decision ultimately paved the way for Jo's adoption. In making the decision, this court found that protection concerns, related to substance abuse and violence, were ongoing. The following examples, which were reviewed in the decision reported at **Nova Scotia (Community Services) v. N.L.**, 2010 NSSC 328, confirm the court's decision:

- In March 2009, NL advised that she was assaulted by WM. The police, who responded, indicated that NL was intoxicated at the time. NL was arrested because there were two outstanding warrants and because she had breached the terms of her release.

- Between April 15 and July 14, 2009, NL was incarcerated. Just days after her release from prison, NL was intoxicated at a wedding dance and threatened an Agency worker, who was also at the dance.

- In July 2009, NL advised that she was brutally assaulted by WM. The police, who responded, indicated that NL was intoxicated at the time of the assault.

- NL was convicted of various criminal charges after the 2008 permanent care order issued, including: theft; two failures to appear; three breaches; mischief (damage to property); operating a vehicle while impaired; and driving while intoxicated.

[63] *2011 Contested Protection Hearing*

[64] The first protection proceeding involving Ab was contested at the protection stage. In January 2011, this court found that Ab and Je were children in need of protective services in its decision reported at **Nova Scotia (Community Services) v. N.L.**, 2011 NSSC 35. The evidence established that there was a real chance of danger, that Je, who had been returned to NL's care, and Ab, who was in agency custody, would suffer physical harm from NL or WM, or both, as a result of domestic violence, or substance abuse, or both, as stated at paras. 20 and 21 of the decision. In reaching this conclusion, this court made a number of relevant findings, including the following:

- NL continued to abuse alcohol to alleviate stress and anxiety, and to cope with her past. Since the last hearing, NL had been convicted of three additional alcohol related offences.

- NL and WM failed to acknowledge their addictions. Both minimized. Each displayed a lack of insight into the problem and the impact of addictions on children.

- NL and WM lacked insight on the issue of domestic violence. They minimized the abuse. Both were under the mistaken impression that the children were safe because of their pact to no longer be violent.

- Couple's counselling had not been undertaken. The parties had not acquired skills to resolve differences and to communicate in a healthy fashion.

- The parties maintained contact despite a court order prohibiting interaction.

[65] In its decision, the court noted that before Ab could be safely returned, the parties would have to successfully engage in intensive therapy in the areas of domestic violence, anger management, acceptance of responsibility, communication, stress management, and coping skills. NL was also required to participate in mental health and addiction services. Neither party was to consume alcohol or illegal drugs. Drug and alcohol testing was ordered.

[66] *2011 Contested Disposition Review Hearing*

[67] The parties challenged the Minister's involvement at a contested disposition review held in the summer of 2011.

[68] In its decision dated September 29, 2011, and reported at **Nova Scotia (Community Services) v. N.L.**, 2011 NSSC 369, this court held that the parties had successfully resolved the protection issues related to domestic violence, anger management, and healthy communication. WM and NL had actively engaged in therapy and had implemented the skills that were taught through programming and counselling. The court also acknowledged other significant gains including consistency in attending access; co-operation with the case plan; maintaining a clean, stable, and appropriate residence; participating in services; and providing consistent loving, nurturing, and kind parenting.

[69] Despite these gains, the court refused to return Ab to her parents' supervised care because of the following:

- WM offered, and NL took sleeping pills that were prescribed to WM. This is illegal and was in violation of the court order.

- Both parties continued to use alcohol. Neither party recognized a problem with occasional alcohol use, despite the court order prohibiting alcohol consumption.

- NL drank a minimum of four beer in February 2011.

- Both parties had passive exposure to cocaine. This was consistent with the evidence of Mr. Gareri who had performed hair follicle testing.

- NL continued to use cocaine. This finding was consistent with Mr. Gareri's test results and was also consistent with the results from the CBRH's immunoassay testing conducted on NL's urine at the time of her admission in May 2011. This finding was also consistent with Dr. Ali's evidence that NL's dilated pupils were a sign of cocaine use.

- NL staged a drug overdose in an attempt to mask her continued use of cocaine. Such a finding was consistent with Dr. Ali's evidence. He stated that NL could not have ingested the medication in the manner described because such an overdose was potentially lethal and would create physical symptoms that were absent in NL, including hallucinations, intense anxiety, agitation, and restlessness.

- WM was abusing codeine, Tylenol 1, at an excessive level which exceeded the stipulated daily maximum amount. This too was a form of substance abuse.

- WM shaved his head to avoid drug testing, and not because he wanted a haircut.

[70] *Final 2012 Disposition Review for Ab*

[71] Protection concerns surrounding substance abuse had not been corrected at the time the proceeding involving Ab was terminated on January 23, 2012. As such, and by consent, Ab was placed in the custody of BM, while NL and WM were granted supervised access pursuant to the provisions of a *MCA* order.

[72] *2012 Protection Proceeding Involving Je*

[73] The protection proceeding continued in respect of Je.

[74] On the morning of February 28, 2012, police responded to a 911 call placed by Je. When the police arrived, they found NL and another man, not WM, heavily intoxicated. The man was arrested because he was in breach of a court order. NL was inappropriate, angry, aggressive and verbally abusive to Je. She blamed Je. The police left the home, but, soon returned because of Je's screams. NL was arrested.

[75] On March 27, 2012, the supervision order involving Je was terminated given Je's age and request.

[76] *Events of June and July 2012*

[77] On June 8, 2012, police responded to a call placed by WM, who reported that NL was smashing the windows at his home. The police found NL in an upstairs closet, with a half empty liquor bottle. She was charged with property damage. WM asked the police not to report the incident to anyone. NL was pregnant at the time.

[78] On July 25, 2012, BM told an agency worker that she allowed WM and NL to exercise unsupervised access to Ab, contrary to the *MCA* order. BM confirmed that she would not permit unsupervised contact again. BM later allowed WM and NL to take Ab to a medical appointment unsupervised and contrary to the court order.

[79] *2012 Protection Proceeding Involving Ja*

[80] The agency apprehended Ja at his birth in December 2012. A few days later, Ja joined his sister Ab, when he was placed in the care of BM. Extensive daily visits, which evolved into overnight visits, were granted to NL because of her reported progress with the case plan. For his part, WM was granted supervised access three days a week.

[81] *July 2013 Apprehension*

[82] These liberal access provisions came to a grinding halt on July 16, 2013 when the Agency apprehended both Ab and Ja. A new protection proceeding was initiated on Ab's behalf. Both children were placed into the care and custody of the Minister, with supervised access to the three respondents.

[83] *2014 Contested Access Motion*

[84] NL and WM filed a motion to vary the terms of access. The motion was heard on January 20, 2014; an oral decision was given on February 3, 2014. In refusing the variation request, this court noted the following protection concerns:

- NL and WM lacked insight.
- NL failed to appreciate that her consumption of alcohol, in contravention of the order, was unsafe. For his part, WM glossed over his own addiction issues.
- NL and WM minimized the violence and safety issues. They failed to report the assault that had taken place, in the presence of Ab and Ja, between NL and BM in July 2013. They also failed to report the assault that resulted in WM sustaining a black eye in July 2013.

- WM was found to be defensive and agitated. He had assumed the role of a victim. He failed to recognize how his conduct contributed to the protection concerns. NL also assumed the victim role, and failed to take any responsibility for her actions.

- NL and WM consistently breached court orders.

[85] *Contested Permanent Care Hearing Involving Ja*

[86] NL and WM challenged the Minister's permanent care application relating to Ja. On May 28, 2014, following a contested hearing, this court placed Ja in the permanent care and custody of the Minister, with no provision for access. In so doing, the court held that Ja remained a child in need of protective services.

[87] Violence and substance abuse were the identified protection risks which resulted in the permanent care finding. The detailed reasons for this ruling are found in the court's decision reported at **Nova Scotia (Community Services) v. NL**, 2014 NSSC 201.

[88] In its decision, this court noted that although many services had been undertaken over the years, and although the parties were intelligent and had the capacity to parent, they nonetheless had not integrated what they had learned from services into their lives. They failed to create the long term lifestyle changes that were necessary to eliminate or reduce the identified protection risks. This conclusion was based, in part, on the following findings:

- NL was out of control, usually when under the influence of substances, but also, on occasion, when sober. The June 8, 2012 incident, when NL smashed the windows at WM's home, occurred when NL was allegedly sober. The police detected no signs of intoxication, despite NL possessing a half empty bottle of vodka. WM refused to co-operate with the police after the arrest, so charges did not proceed. WM asked the police to keep this violent incident a secret.

- On June 16, 2013, NL was so unstable, explosive, and intoxicated that she had to be tackled by the police and placed in wrist locks before her arrest could be completed. NL was charged with public intoxication, assaulting a police officer, and causing a disturbance. NL was kept in lock-up overnight. The next morning, NL continued to respond angrily and disrespectfully to Constable Estwick after she had sobered up.

- NL and BM were involved in an assault in the presence Ab and Ja in July 2013. WM was present for the assault and did not intervene. None of the respondents reported the assault to the police or the agency. BM ultimately did discuss the assault after being asked direct questions. WM minimized the seriousness of the assault.

- WM was vague in his accounting of the events leading up to his receipt of a black eye in July 2013. The assault was not reported to the police or agency.

- WM and NL were not truthful with their addiction counsellors. Effective treatment requires honesty.

- WM denied his intensive use of cocaine, despite test results that confirmed active, intensive and frequent cocaine use, in combination with alcohol consumption, for the period between November and December 2012. In addition, WM gave contradictory evidence as to last use.

- Both NL and WM used illegal drugs and alcohol contrary to the court order which mandated abstinence.

- The parties remained in an unhealthy relationship, even if the sexual dimension was absent. The relationship posed ongoing protection concerns because of NL's explosive acts of violence, both when sober and intoxicated. Had WM appreciated the nature of the harm implicit in their relationship, WM would have terminated all contact with NL. He did not do so because their toxic relationship took priority over Ja's needs.

- The parties' past parenting history, viewed in context, was indicative that they would, on a balance of probabilities, continue to engage in conduct that would create protection risks. This despite the fact that, after years of adverse results, WM had finally produced a clean drug test for the period between September to early December 2013.

[89] *Events of June to August 2014*

[90] NL's behaviour did not improve after Ja was placed in permanent care even though Ab's application had not been determined. NL continued to use drugs and alcohol, as is evident from the following examples:

- On June 12, 2014, Constables MacDonald and Melski arrested NL for public intoxication and a breach of conditions. NL was slurring her speech, had glossy eyes, was staggering, and reeked of liquor.

- On June 28, 2014, Constables MacKinnon and Timmons were investigating a stolen cell phone which NL threw to the ground. NL was under the influence of substances as evidenced in her dilated pupils, slight staggering, and slurring of speech.

- NL admitted to abusing alcohol, cocaine and nerve pills for the months of June and July 2014, prior to her admission to the Marguerite Center in Halifax.

[91] *Summary of Past Parenting History*

[92] NL and WM have a longstanding and disturbing child protection history. This court has been involved, almost continuously, with both parties since 2007. BM has an isolated history of being involved in one assault. The court's concern with BM centers around her failure to abide by court orders, and of minimizing protection concerns. The Respondents' past parenting history is relevant to my decision.

[93] Past parenting history, however, is not necessarily determinative of the current protection status. Parents have the capacity to effect positive and permanent lifestyle changes, regardless of their past. Parents can and do correct protection risks associated with violence and substance abuse. The question that must now be addressed, is whether NL and WM have done so, given their troubled past. Intertwined with this question is the issue surrounding the status of the parties' relationship.

[94] **What is the status of the relationship between WM and NL?**

[95] *Position of the Minister*

[96] The Minister states that NL and WM continue to be involved in an interdependent relationship. In support of her position, the Minister relies upon a number of factors, including the following:

- NL and WM have consistently misrepresented the nature of their relationship over the years, both to the agency and to the court. For example, during the 2008 trial, NL advised the court, Dr. Landry, and other professionals involved in her care, that she terminated her relationship with WM effective December

2007 and that she would not reunite with him. This was not true. In addition, when testifying in 2010, NL stated that her last contact with WM was in the summer of 2009, which was false, as she became pregnant with Ab in December 2009. Further, in 2014, NL and WM provided conflicting evidence as to the nature of their relationship.

- This court found that WM and NL were invested in a toxic relationship, which took priority over Ja's needs, at paras.139 to 141 of its written decision dated June 10, 2014.
- The parties have been exercising access together since November 2014, after Ab's foster parents moved.
- NL also called WM in the presence of an access facilitator and said that she would call WM later.
- The shuttle bus, which the agency hired to transport NL to and from Halifax, picked up NL at WM's home in the early morning hours on March 31, 2015.

[97] *Position of the Respondents*

[98] WM and NL deny a romantic relationship. They state that they are, and will always be connected because they share children. They submit that such contact is laudable, and indeed suggest that they are an example of how separated couples should act.

[99] *Ruling on the Relationship Issue*

[100] I find that the parties continue to have an interdependent relationship, even if the sexual dimension is lacking. The parties communicate and have contact on a regular basis, although in person contact is restricted because NL lives in Halifax at the Marguerite Center, while WM lives in the local area. Whether this interdependent relationship continues to be a protection risk will be dependent on the lifestyle changes effected by the parties since Ja's 2014 permanent care hearing.

[101] **Has NL resolved outstanding protection concerns?**

[102] *Position of the Parties*

[103] The parties appear to recognize that NL has not resolved outstanding protection concerns, although she is making significant efforts to do so. NL is not

putting forth a plan and is accepting of supervised access in the event the court adopts WM's plan of care.

[104] *Ruling on the Protection Issue*

[105] NL has not successfully eliminated outstanding protection concerns. Services to correct violence and addiction issues have not been completed, as noted in the following findings of fact:

- NL is violent. Violence causes direct and indirect protection concerns. Ab is not safe in NL's presence because the issue of violence has not been successfully addressed. NL was scheduled to complete a 10 week, anger management and violence course in 2015. This course had not been started when she last testified.

- NL has poor problem solving skills. In the past, abusing substances was the means by which NL coped with guilt, frustrations and challenges. She can be impulsive and reactive. These traits can lead to violence and destruction.

- It is probable that Ab would be physically harmed if NL explodes while Ab is in her care. It is probable that Ab would be scarred emotionally if she were to be present for another violent episode, in the same manner that Je was harmed by NLs' treatment of her, and in the same manner that NL was damaged at the hands of her mother. Physical injuries, together with a lack of confidence, a lack of trust, and a lack of stability, are the fruits of violence. Ab deserves more. The court must protect Ab from this real chance of danger that is apparent on the evidence.

- NL has an extensive addiction's history, a history that NL is only beginning to appreciate. NL's misuse of alcohol and drugs has left a path of destruction in its wake, as evidenced in the many examples previously reviewed. NL's ability to remain sober is unknown at this stage, though she has made considerable progress while attending the Center. Indeed, the Minister even recognized these positive changes. Whether her sobriety can be maintained outside the confines of a controlled and structured program remains uncertain.

- NL has not completed all of the intensive personal programming that is offered at the Center. This programming must be concluded if NL is going to succeed in the long term. The programming offered at the Center is the same type of

> intensive programming recommended by Dr. Landry back in 2008 and as previously ordered by the court, inclusive of cognitive behavioural therapy.

[106] Although violence and substance abuse issues have not been adequately addressed by NL, the court nonetheless recognizes the momentous and affirmative changes that NL has been able to sustain since August 2014. She has remained clean and sober. There have been no further acts of violence. She is participating in intensive therapy. She finally articulated responsibility for some of the past child protection concerns. She was not as defensive as she has been in the past. This bodes well for continued future progress.

[107] Further, the court recognizes that NL has the capacity and intellect to parent safely. She knows how to provide nurturing, loving, and responsible parenting. The Minister also has acknowledged her ability to do so.

[108] Therefore, although NL has not eliminated the child protection concerns, she is moving along the path to do so.

[109] **Has WM resolved outstanding protection concerns?**

[110] *Position of the Minister*

[111] The Minister states that child protection concerns continue to plague WM for the following reasons:

- He tested positive for cocaine up until November 2014, which at a minimum proves that WM continues to be in an environment where cocaine is used. This is an obvious protection risk, as noted previously by this court.
- WM continues to be involved with NL. NL's protection issues have not resolved. Their relationship therefore continues to be a protection risk, as this court previously noted.
- WM, NL and BM have repeatedly breached court orders in the past. They consistently withheld protection concerns from the agency. Their assurances to do otherwise ring hollow.

[112] The Minister further states that the test results from the Motherisk lab are reliable. The Minister submits that the directives from the government of Ontario in relation to the Motherisk lab have no impact on Nova Scotia, from a jurisdictional perspective. Further, the Minister notes that this court must make its decision on the

evidence before it, and is not permitted to speculate about what the Lang review may ultimately conclude. From the Minister's perspective, Mr. Gareri's evidence must be adopted.

[113] *Position of the Respondents*

[114] In contrast, the Respondents state that WM has resolved all protection concerns for the following reasons:

- WM is not violent.
- The relationship between WM and NL has changed. NL resides in Halifax; WM resides in the local area. NL will be afforded only supervised access. The proposed supervisors will ensure that Ab is protected while NL exercises access.
- There is no evidence that WM has been involved in any activities which create protection risks.
- WM has not used cocaine in many months.
- WM appreciates his addiction and will not use in the future.
- The Motherisk test results are not reliable for the following reasons:
    - ✓ The Motherisk lab is no longer permitted to conduct hair strand analysis. The province of Ontario has initiated a review, headed by the honourable Susan Lang, a retired judge of the Ontario Court of Appeal. The testing done by the Motherisk lab between 2005 and 2015 will be subject to the review, including the extent to which Motherisk adhered to internationally-recognized forensic standards.
    - ✓ Out of an abundance of caution, the Ontario Ministry of Children and Youth Services has directed children's aid societies to immediately stop using or relying on hair strand drug and alcohol testing in the course of providing child protection services.
    - ✓ The Motherisk lab is a clinical lab; it is not a licensed forensic lab.
    - ✓ The Omega lab test results confirm that WM has not used cocaine.

- ✓ The Omega lab is a forensic lab.

- ✓ The Motherisk lab produced an erroneous result. NL tested negative for cocaine and other drugs according to the lab results for the period between June and November 2014. We know this finding is false. NL abused drugs, including cocaine in June and July 2014 before she entered the Marguerite Center. If the Motherisk testing was accurate, NL's results would have been positive.

[115] I will now provide my rulings on the three areas of concern, beginning with the issue of violence.

[116] *Ruling on the Issue of Violence*

[117] There is no convincing evidence that proves a real chance that violence will be a protection concern if Ab is placed in WM's care for the following reasons:

- Approximately six years have passed since WM engaged in intimate partner violence. Since that time, WM successfully completed counselling and therapy in the area of anger management, violence, and healthy communication.

- The only other episode of violence which personally involved WM occurred in July 2013. He was punched in the face and sustained a black eye. There is little convincing evidence to suggest that WM's lifestyle will result in similar conduct in the future.

- WM was not connected to most of the violent episodes spanning from 2010 until 2014. These episodes all involved NL. WM was, however, present for two of the occurrences. In June 2012, NL smashed out the windows in WM's home. WM immediately called police. In July 2013, WM observed an assault between NL and his mother. He did not participate in the assault.

- WM does not frequent bars or gatherings which involve drugs and alcohol. His routine is now fairly mundane, and involves caring for his daughter MK, his home and dog. He enjoys the support and company of his family. There is nothing harmful taking place in WM's home, nor in the home of his parents. They appear to enjoy a relatively peaceful existence as is evidenced in the testimony of WM, BM, MM, MKM, MoLD, and BeM. I accept their testimony is respect of WM's home environment.

- I find that the June 2013 assault involving NL and BM was an isolated occurrence on the part of BM. Violence is not part of BM's lifestyle. There is no protection risk associated with Ab's relationship with her paternal grandmother.

[118] In summary, there is no substantial risk that Ab will suffer physical harm inflicted or caused by violence on the part of WM or from those with whom WM regularly associates, with the exception of NL. The concern involving NL can be adequately and safely addressed through a supervised access order as will be later detailed in this decision.

[119] *Ruling on the Relationship Issue*

[120] In my written decision reported at 2014 NSSC 201, this court held, at para. 141, that the M L relationship posed ongoing protection concerns because of NL's explosive acts of violence. The court further held that WM would have terminated all contact with NL had he appreciated the nature of the harm implicit within the relationship. WM did not do so because the toxic relationship took priority over Ja's needs.

[121] I find that these concerns have since been substantially reduced for the following reasons:

- NL and WM no longer live in the same area. NL resides in the Halifax area at the Marguerite Center, while WM lives in the CBRM. This reduces the opportunity for in person contact.

- NL has made monumental changes in her life. She has not consumed alcohol or drugs since August 2014. She is actively participating in the intensive therapy that is necessary to successfully overcome the unhealthy and negative coping mechanisms which NL employed in the past.

- There is no evidence that NL has been violent since she entered the Marguerite Center in August 2014. The evidence indicates that she has been able to peacefully navigate the rules of the house and lives tranquilly with other participants and community members.

[122] Given these changes, I find that the protection concerns related to WM's relationship with NL, can be safely addressed through a *MCA* order, with specified and defined supervised access provisions. These will be detailed later in the decision,

but will include provisions that limit the supervisors to MM and Be M, and which limit the time and place of access. These controls are necessary to ensure the safety and well-being of Ab.

[123] The supervisors were chosen because the court was impressed with MM and BeM. The court is confident that each will comply with the court directives and will immediately report any breaches or concerns. In addition, MM and BeM have the ability and experience to properly handle any challenges that possibly may arise during the exercise of access.

[124] The court did not approve MK, Je or Mo because of their ages and relationship with NL and WM. BM was not approved because she was involved in an assault with NL. WM also had past altercations with NL.

[125] *Ruling on the Substance Abuse Issue*

[126] In the decision reported at 2014 NSSC 201, this court held that WM had not reduced the risk associated with his long standing addiction. He lacked insight and continued to use alcohol and drugs notwithstanding the court prohibition.

[127] In determining whether this finding has changed, I must review the results from the two labs which performed hair strand analysis. The Minister retained Mr. Gareri of the Motherisk lab. Dr. Engelhart was retained by WM because he strenuously disputed the test results from the Motherisk lab.

[128] Dr. Engelhart is the laboratory director of Omega Laboratories Inc. Dr. Engelhart noted that his facility is a forensic drug testing facility. Accreditation was received from the College of American Pathologists. The Omega lab performs testing for various countries, including the USA, Canada, Brazil, South Africa, Austrailia and New Zealand. He confirmed that WM's hair did not test positive for cocaine, and the other five panel drugs, for the period between early November 2014 and early February 2015, based upon average hair growth. WM had a clean test. I accept the evidence of Dr. Engelhart.

[129] Mr. Gareri testified about the Motherisk test results during the course of several different proceedings involving WM and NL. For the purpose of this decision, I will now examine the results from September 2013 until January 2015. Mr. Gareri noted as follows:

- Between early September and early December 2013, WM tested negative for cocaine. Trace amounts of codeine and benzodiazepines were found and explained by WM's prescriptions.

- Between December 2013 and February 2014, WM tested positive, at a very low range, for cocaine. The amount detected placed WM at the bottom 5% of the clinical population. The metabolite, benzoylecgonine, was not detected. The absence of the metabolite means that active cocaine use was not proven. Rather the test results were consistent with environmental exposure to cocaine, although isolated or infrequent use of cocaine could not be ruled out. The positive codeine results were explained by WM's prescription.

- Between March and May 2014, WM tested positive, at a very low range, for cocaine. The trace amount detected placed WM at the bottom 5% of the clinical population. Mr. Gareri's report indicates that although cocaine was detected, the concentration was too low to reliably quantify the amount. The test results were also negative for the metabolite, benzoylecgonine. The absence of the metabolite means that active cocaine use was not proven. Rather the test results were consistent with environmental exposure to cocaine, although isolated or infrequent use of cocaine could not be ruled out. The positive codeine results were explained by WM's prescription.

- Between mid-September and November 2014, WM tested positive, at a very low range, for cocaine. The results fell within the lowest 5% of values. Further a trace amount of the metabolite, benzoylecgonine was also found. A trace result was previously defined as a detection whose concentration is too low to reliably quantify the amount. The test results were consistent with isolated or infrequent use of cocaine on as little as one occasion; residual concentration from much higher level of cocaine use in the recent past; or environmental exposure to cocaine. The positive results for codeine and benzodiazepines were explained by WM's prescriptions.

[130] The Motherisk lab is not a forensic lab; it is a clinical lab. Although Motherisk has developed chain of custody and quality assurance protocols, it has never been accredited for forensic testing. Despite a lack of accreditation, the Motherisk lab was involved in forensic drug testing. Mr. Gareri was confident in the lab protocols. He acknowledged the possibility of human error, as opposed to errors arising from the technology or from his interpretation of the test results.

[131] It does nonetheless appear that one error was produced at the Motherisk facility. NL used cocaine in June and July 2014. The Motherisk results came back negative for this time period. Mr. Gareri stated this result was a false negative, despite the fact that cocaine is one of the drugs that has an excellent incorporation rate into hair strands. A false negative result, however, cannot be used to infer a false positive result for WM. According to Mr. Gareri, the two are not related. I have no evidence upon which to draw an opposite conclusion. I will not make such an inference.

[132] Mr. Gareri acknowledged that the Ontario government had initiated a review of the Motherisk lab. The review was slated to examine the adequacy and reliability of the immunoassay biochemical hair-testing method it used between 2005 and 2010. As the respondents were disputing only the 2014 and 2015 test results, the review did not appear pertinent to the court's decision. Further, Mr. Gareri confirmed that a December 2014 inspection did not identify any problem areas.

[133] After Mr. Gareri testified, the perimeters of the independent Motherisk review expanded. This court therefore admitted the news release from the Ontario government which confirmed the nature of the expansion and the cautionary prohibition directed to child protection agencies.

[134] The review and news release are not determinative of the reliability issue. I cannot speculate as to what the outcome of the review will be. Neither can I infer that the review will cast doubt on the integrity of the Motherisk hair strand analysis. In addition, the Ontario Ministry of Children and Youth Services has no jurisdiction to dictate to child protection authorities operating in Nova Scotia. Therefore, in reaching my decision, I ascribe no weight to the news release, to the review, and to the directive of the Ministry of Children and Youth Services.

[135] The court must make its decision on the evidence. In this regard, I am cognizant that some of the test results are based on trace findings, and all results are based on very low ranges, or the placement within the bottom 5% of the value range. Given these value ranges, and the fact that WM produced a clean test between September to December 2013, I find that the test results from the Motherisk lab prove that WM had some exposure to cocaine. I find that WM has not used cocaine since before September 2013. Protection conclusions must be assessed in light of this finding of fact.

[136] I conclude that the protection concerns surrounding WM's substance abuse have resolved for the following reasons:

- WM has not used cocaine since September 2013.

- WM has made permanent lifestyle chances. He does not frequent bars or parties or places where substances are being abused. He does not engage in inappropriate conduct in his home, nor does he allow others to do so. I accept the evidence of BM, MM, MKM, Mo LD, and BeM in their description of WM's activities and of the operation of his home. In reaching this conclusion, I have weighed the evidence of BM and WM with great caution given their capacity to minimize, and in WM's case, to misrepresent. I also recognize that WM hid his past drug usage from family and friends. Despite this caution, I find that WM has changed.

- There is no evidence that WM engaged in any antisocial activity since 2013. There is no evidence of violence. There is no evidence of disruption. There is no evidence of conflict. Interpersonal clashes with agency workers and calling a judge a wicked witch, are not protection concerns. Had WM been abusing drugs, he would have been involved in conflict, as he was in the past. Instead of conflict, WM spends his day caring for his daughter, looking after his dog, and ensuring the upkeep of his home and property.

- I find that WM is not knowingly around cocaine. He attends his mother's home which is drug free. WM's home is drug free. He also frequently visits his charming friend, Mr. B who is retired. He helps him bag coal and do yard work. Cocaine is not used when WM is present. Whether Mr. B's home is the source of the passive cocaine exposure is a possibility, not a probability. Mr. B was charged with trafficking cocaine in the past, but these charges were later dropped. There is insufficient evidence to allow me to draw an inference that Mr. B's home is the source of the passive cocaine exposure. The court concludes that WM may be unknowingly touching surfaces or articles that are latently contaminated with cocaine and that such environments do not present as unsafe.

- Unlike at other hearings, WM assumed responsibility for some of the past protection concerns. He acknowledged the correctness of the test results from the Motherisk lab in prior years. This is a significant change in WM's attitude.

- WM's demeanor has changed. In the past, WM was frequently agitated and defensive. Further, during previous court hearings, there were times when

WM was not able to testify coherently. WM was not agitated or defensive when he testified in December 2014 and January 2015; he was coherent.

- Although the court continues to be troubled by a lack of a genuine engagement with Addiction Services, I find that WM has nevertheless remained substance free since September 2013. Unlike NL, WM has been able to sustain abstinence, without extensive therapy, because he has never used drugs and alcohol as a coping mechanism. There is no evidence that WM's family background was destructive, as is the case of NL.

[137] *Summary of Protection Issues Involving WM*

[138] I find that WM has resolved the protection concerns that were previously identified. Placing Ab in his care would not place her at a substantial risk of harm that is apparent on the evidence. Ab's safety is not in jeopardy by virtue of concerns surrounding violence, substance abuse, or WM's relationship with NL, given the current circumstances.

[139] **Should Ab be placed in the permanent care and custody of the Minister?**

[140] At the outset of this decision, I noted that I am restricted to the answer of one question. That question is whether Ab remains a child in need of protective services. The answer is no. As a result, the state can no longer be involved in Ab's life. The protection proceeding must be and is therefore dismissed.

[141] **Should access be granted and under what terms?**

[142] *Variation and Best Interests*

[143] Section 37.1 of the *MCA* provides the court with the authority to grant a variation order if there is a material change in circumstances. In a variation application, as in all parenting decisions under the *Act*, I must apply the best interests of the child test as articulated in the legislation.

[144] I agree that a material change in circumstances has occurred. BM no longer wishes to exercise a parenting role; she wants to be a supportive and loving grandmother. It is in Ab's best interests to be placed in WM's sole custody. A variation order is therefore granted.

[145] *Need for Supervision*

[146] All respondents further agree that it is in Ab's best interests that NL's access be supervised. I agree. A complete denial of access is infrequently ordered and is restricted to those cases where the behaviours of the access parent are extreme, and where even supervised access would place the child at risk of emotional or physical harm: **Doncaster v. Field**, 2014 NSCA 39; **Werner v. Werner**, 2013 NSCA 6.

[147] I further find that supervised access is in Ab's best interests. The evidence confirms that NL and Ab share a bond and that access has been a positive experience for Ab. Supervision is necessary because of ongoing protection risks and safety concerns: **Slawter v. Bellefontaine**, 2012 NSCA 48; **CM v. CS,** 2013 NSSC 273; and **MH. v. JH**., 2013 NSSC 198.

[148] *Terms of Parenting and Supervision Order*

[149] The parenting order will contain the following terms and conditions:

- WM will have sole custody of Ab McIntyre. WM shall have sole decision making authority.
- WM will keep NL advised of important matters affecting the health, education and general welfare of Ab. All communication will be respectful and child focused.
- Neither party will use illegal drugs. Each party may take medication that is prescribed for him or her according to the terms of the prescription.
- NL must not consume alcohol.
- WM must not consume alcohol while in a child care-giving role.
- NL will exercise supervised access to Ab according to the following terms and conditions:
    - ✓ Access must be supervised at all times.
    - ✓ MM and BeM are the only authorized access supervisors. No other person is permitted to supervise access, unless that person has received prior court approval. Either party may apply to the court to have another person added as an access supervisor.

- ✓ Before assuming the role of access supervisor, MM and BeM must each sign an Affidavit and file it with the court in which each confirms that he has read or reviewed the decision; he has read and understands the terms of the parenting order; he will faithfully abide by its terms and conditions; he will immediately report any breach of the access provisions to the court, to the police, and to WM; and he understands that any exercise of access outside the scope of this order constitutes a child protection risk that must be reported to the child protection authority.

- ✓ Access must not take place at the home or on the property of WM, or at the home or on the property of BM. WM and BM must not be present while NL exercises access. Either party may apply to have this provision varied after NL has successfully completed the 10 week anger management program and the one year program at the Marguerite Center.

- ✓ In the event, the access supervisors determine that NL is under the influence, access shall not occur. In the event NL becomes agitated or violent or otherwise inappropriate, the access supervisor must immediately remove Ab from access.

- ✓ There shall be no overnight access.

- ✓ Access shall occur no more than twice per week, and for a maximum of five hours on each occasion, if the access supervisors are available.

- ✓ WM may permit telephone access between NL and Ab at reasonable times and provided the telephone access is appropriate and child focussed.

- ✓ WM must ensure that any babysitter or child care provider is aware of the order and signs an acknowledgement that he or she will immediately report to WM and to the child protection authority any attempt by NL to visit with the child while in the care of the baby sitter or child care provider.

- ✓ Either party may apply to the court to vary the supervised access provisions of this order if there is a material change in circumstances, including when NL successfully completes all programming at the

> Marguerite Center and maintains her sobriety after returning to the community. Nothing in this provision limits or restricts the right of either party to file a variation application.

[150] **Conclusion**

[151] The child protection proceeding concerning Ab is dismissed because Ab is no longer a child in need of protective services. WM is vested with sole custody, with supervised access to NL according to the strict terms and conditions which have been imposed.

[152] Ms. McSween is to draft the termination order; Mr. Stanwick is to draft the *MCA* order, and the supervisor affidavits.

[153] A copy of this decision will be placed in both the *CFSA* and *MCA* files.

Forgeron, J.