

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** Nova Scotia (Community Services) v. S.G., 2015 NSSC 201

**Date:** 2015-07-15

**Docket:** *SFSNCFSA* No. 091738

**Registry:** Sydney

**Between:**

Minister of Community Services

Applicant

v.

S.G. and J.D.

Respondents

**TO PUBLISHERS OF THIS CASE:**

**PLEASE TAKE NOTE THAT SECTION 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADINGS BEFORE PUBLICATION.**

**SECTION 94(1) PROVIDES:**

**Prohibition on publication**

**1. 94 (1) 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.**

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: April 28, 2015; May 4, 5, 6, 7 and 20, 2015; June 11, 2015  
and July 3, 2015 in Sydney, Nova Scotia

Written Release: July 15, 2015

Counsel: Tara MacSween for the Applicant  
Jill Perry for the Respondent, S.G.  
Shannon Mason for the Respondent, J.D.

**By the Court:**

[1] Children are entitled to be raised in a safe, loving home. Parents are expected to protect their children from harm. Those are two of the principles on which Nova Scotia's child protection legislation is based. Unfortunately for some children, these principles do not translate to reality.

**Background**

[2] S.G. and J.D. are the parents of C.D, who was born on March \* 2014. C.D. was described as a happy, easy baby who did not cry much. She suffered serious, non-accidental injuries when she was eleven weeks old. Her injuries included bruising of the brain, bleeding in the brain, retinal hemorrhages, and a fractured leg bone.

[3] S.G. and J.D. started dating in February, 2013. C.D. was a planned pregnancy. Before C.D. was born, her parents lived with J.D.'s parents in Dominion. After she was born, S.G. and J.D. moved in with S.G.'s mother K.P. and her husband. They lived there for about 2 months. After a late night argument between S.G. and her step-father, the new parents took C.D. and moved in with S.G.'s father. They were living with S.G.'s father when C.D. was injured.

**Issue**

[4] The issue before the court is whether a finding under s. 22(2)(a) of the *Children and Family Services Act* should be entered against one or both parents. That section states:

22 (2) A child is in need of protective services where

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

**History of Proceedings**

[5] The child C.D. was taken into the care of the Minister on June 19, 2014. The parents both consented to a protection finding under s. 22(2)(b) of the *Children and Family Services Act* S.N.S. 1990, c. 5 on September 3, 2014. The

Minister now seeks a finding under s. 22(2)(a) against both parents as a result of C.D.'s extensive and unexplained non-accidental injuries.

[6] The first disposition hearing was held on November 27, 2014. At that time, the parents consented to the plan advanced by the Minister, which requested the child remain in the temporary care of the Minister. The terms and conditions of the temporary care order, which has been reviewed several times since then, allow the parents to have supervised access. It also requires compliance with a number of conditions, including abstinence from drugs and alcohol, and hair or urine testing for the presence of drugs or alcohol.

[7] Running parallel to this proceeding was a police investigation which concluded in the summer of 2014. No charges have been laid and the file was placed in abeyance pending receipt of further information.

### **The medical evidence**

[8] The hearing on whether a finding should be entered under s. 22(2)(a) of the *Children and Family Services Act* was delayed while J.D. sought a second medical opinion. However, he did not call expert medical evidence at trial.

[9] The I.W.K. report authored by Dr. McLaughlin and dated July 31, 2014 was tendered as an exhibit with the consent of the parties. It is the only medical evidence tendered at trial. Dr. McLaughlin was qualified by consent to offer opinion evidence in the area of pediatric medicine, and more particularly, the areas of child maltreatment and interpretation of injuries.

[10] The I.W.K. report outlines the history of C.D.'s injuries and management. It includes a review of hospital records which show that C.D. was taken to the emergency department of the Cape Breton Regional Hospital the morning of June 15, 2014. The presenting complaint indicates C.D. was "crying inconsolably".

[11] C.D. was assessed by the E.R. physician, who admitted her. She was treated with IV fluids for dehydration and antibiotics for a possible infection. No diagnosis was made at that time.

[12] The E.R. physician reassessed C.D. that evening, at which time she was reported to be more alert and feeding better. She had a low hemoglobin value, but was no longer dehydrated.

[13] C.D.'s parents stayed overnight with her at the hospital. In the early hours of June 16, 2014, S.G. noticed that C.D.'s right arm and leg were twitching. This first seizure lasted 20 minutes in total. C.D. then suffered periodic breathing lapses, she became even less alert, and she displayed an irregular heart rate.

[14] An urgent C.T. scan was arranged. While awaiting the C.T. scan, C.D. suffered further seizures, for which she was given anti-seizure medications. Despite those medications, the seizures continued.

[15] The C.T. scan was completed by 6:30 a.m. on June 16, 2014. Initial reports suggested a blood clot in the large veins around the brain. A plan was made to airlift C.D. to the I.W.K. pediatric intensive care unit in Halifax. She was given additional anti-seizure medication and intubated for breathing support before being transferred. She arrived at the I.W.K. at approximately 4:30 p.m. on June 16, 2014.

[16] An M.R.I. of C.D.'s brain was completed shortly after her arrival in Halifax. It revealed extensive subdural hemorrhages (bleeding in the brain), as well as brain contusions (bruising). The M.R.I. discounted the preliminary diagnosis of blood clot.

[17] A pediatric ophthalmologist examined C.D. on June 16, 2014 after the M.R.I. was completed. Imaging done on her eyes showed extensive bilateral retinal and pre-retinal hemorrhages, extending 360 degrees. The hemorrhages were multi-layered and widely distributed throughout the retinal layers. It was difficult to assess C.D.'s optic nerves, due to the extent and number of hemorrhages.

[18] Given that trauma is a possible cause of brain and retinal injuries, the pediatric intensive care physician contacted the I.W.K. child protection unit for consultation. Her concerns were also communicated to the Department of Community Services child welfare office.

[19] Dr. McLaughlin with the I.W.K. child protection team examined C.D. the morning of June 17, 2014. Her report indicates that C.D. displayed bruising which was attributed to the medical care and examinations conducted in Sydney and Halifax before the child protection team examined C.D. She was noted to move in response to touch, but did not move spontaneously. Her soft spot was full though not bulging, her tone was increased and she had abnormal, intermittent twitching movements of her limbs. When her eyes were open, she did not fix and

follow with her eyes. The whites of her eyes were clear and her mouth was moist. No heart murmur was detected and her examination was otherwise normal.

[20] Dr. McLaughlin's report outlines the treatment, extensive investigations and consultations undertaken at the I.W.K.

[21] In addition to imaging studies, the I.W.K. team consulted with hematology, neurology and genetics to exclude possible causes for the bleeding in C.D.'s eyes and brain. They ruled out such unlikely causes as predisposition to easy bleeding, metabolic disease, infection and oxygen deprivation.

### **The brain injury**

[22] Dr. McLaughlin concluded that the subdural hemorrhage, without evidence of underlying medical disorder, was highly suspicious of abusive head injury. In C.D.'s case, no alternative medical explanation for the subdural bleeding was found after extensive testing. The history of very minor events provided by the mother, father and maternal grandmother did not, in her opinion, adequately explain the bleeding or bruising. She stated:

"I remain concerned that her subdural hemorrhages, with the synchronous findings of brain injury and retinal hemorrhages, are best explained by an as of yet undisclosed traumatic event.

C.D. was also found to have suffered a significant traumatic brain injury as evidenced by her clinical presentation and the significant multiple intra cranial injuries seen on the imaging. Essentially, she had significant bruising to the brain."

[23] Dr. McLaughlin concluded that, without a clear, significant accidental trauma history, C.D.'s brain injury was most likely the result of inflicted trauma.

[24] In assessing the timing of such injuries, Dr. McLaughlin noted that typically, the more severe the episode which causes injury to the brain, the more quickly abnormalities such as irritability, lethargy, fatigue, crying, decreased appetite and seizures will be observed in the child. In her opinion, given the timing of onset of symptoms and the history provided by the family, it is most likely C.D.'s brain injuries were inflicted the morning of Saturday, June 14, 2014.

### **The retinal hemorrhages**

[25] Dr. McLaughlin testified that retinal hemorrhages cannot be accurately dated, and there are numerous traumatic and non-traumatic explanations possible for them. The I.W.K. team considered and ruled out possible causes such as:

- Accidental trauma - while accidental injury may cause retinal hemorrhages, the force required must be significant enough to cause vitreoretinal traction, and without a significant acceleration/deceleration component (such as shaking), extensive retinal hemorrhages are rarely seen.
- Birth Trauma – retinal hemorrhages related to the birthing process typically resolve within weeks after birth and are few in number. C.D.’s retinal hemorrhages were inconsistent with birth trauma.
- Bleeding Disorders –none were detected, so the retinal hemorrhages could not be explained by a bleeding disorder.
- Metabolic Disorder – this was also investigated and discounted as a possible cause.

[26] The team concluded that non-accidental trauma is the only likely explanation for the retinal hemorrhages seen with C.D. The team could not determine whether the same trauma event which caused the brain injuries caused the retinal hemorrhages.

### **The leg fracture**

[27] The I.W.K. team completed a skeletal survey on C.D. after finding other injuries suggestive of trauma. No leg fractures were seen in the initial scans, though there was some question whether C.D. had suffered a wrist injury. Because healing of bones can be seen on x-rays, the team completed a second skeletal survey on July 2, 2014. C.D. was found to have a “bucket handle” fracture of the left distal tibia on the second set of x-rays. This type of fracture is known as a classic metaphyseal lesion or C.M.L. A wrist injury was ruled out.

[28] Dr. McLaughlin testified that C.M.L.s occur from tractional and twisting forces generated through yanking, tugging and twisting of a child’s limb. It can also happen when a child is shaken. The I.W.K. report notes that these forces are

rarely generated during accidental injuries, so a finding of C.M.L. is highly suggestive of non -accidental injury.

[29] In C.D.'s case, the family offered no possible explanation for the C.M.L. C.D. had received no medical treatment which could possibly explain it. The team looked for alternative explanations such as birth injury, but the level of healing shown on the second x-ray suggested the injury occurred within a couple of weeks, not eleven weeks earlier at the time of birth. Medical conditions such as rickets, renal or liver disease which could affect bone health were discounted as possible causes. So too were genetic bone disease and medications.

[30] Again, it is not clear whether the same trauma which caused the brain injuries caused the C.M.L. I accept Dr. McLaughlin's opinion that it is likely the C.M.L. was inflicted at or around the same time however, as healing was evident on July 2, 2014.

[31] Considering all of the evidence, I find it is most likely that all of C.D.'s injuries occurred at the same time. C.D. and her parents lived with K.P for the first two months of her life. It is unlikely she was injured there. There were more people around her and K.P. was very protective. More importantly, there is no evidence or suggestion of an earlier incident or symptoms of injury. As such, I find there was one incident of abuse which occurred the morning of June 14, 2014. The most likely scenario, given the medical evidence, is an incident of violent shaking.

### **The I.W.K. interview**

[32] The I.W.K. team asked the parents about C.D.'s routine in the days prior to her admission. Both described her as well on Friday, June 13, 2014. S.G. reported that C.D. woke briefly at 6:00 a.m. on June 14, 2014, but settled back to sleep. S.G. told physicians she woke C.D. to feed her, approximately an hour later at 7:00 a.m. She reported that C.D. seemed well, and fed normally. She said she left the home at 8:30 a.m. to prepare for a wedding in which she was standing later that day.

[33] J.D. had C.D. in his care after S.G. left. He reported that he placed C.D. in the lazy boy chair next to him while watching TV, where they both fell asleep. He reported C.D. seemed settled and did not cry. He denied a fall from the chair or any unusual incidents that morning.

[34] J.D. told physicians he took C.D. to his parent's home in Dominion at approximately 10:30 a.m. to dress for the wedding. He reported that C.D. slept in the car seat on route, and remained asleep while being carried into the house. He said she woke while he dressed for the wedding and seemed "OK".

[35] J.D. took the baby with him to the church, and afterwards to the location where the wedding party had photographs taken after the ceremony. He reported that she seemed well, waking for brief periods and feeding normally. S.G. said she saw C.D. briefly during the church procession and later while photographs were being taken. She reported no concerns.

[36] J.D. said that at approximately 4:30 p.m., he took C.D. to her maternal grandmother's house. C.D. was to stay the night there, so the parents could attend the wedding reception dinner together. He told the I.W.K. physicians that C.D. seemed "weak" when he dropped her off.

[37] At approximately 5:30 p.m., the maternal grandmother K.P. texted S.G. to report concerns about C.D., saying that she seemed unusually sleepy and "not herself". S.G. brushed off her mother's concerns and suggested C.D. was just going through a growth spurt. C.D. was fussy through the night and took little milk. In the morning, K.P. reported that C.D. seemed to be in pain, stretching her body straight and whining. She was still more sleepy than normal.

[38] The parents took C.D. to the hospital for assessment Sunday morning. They denied any concerns with C.D. in the days prior, and reported no accidents, injuries or incidents, other than one occasion when S.G. bumped her elbow with C.D. in her arms.

### **The first interview with police and social worker**

[39] The parents were interviewed individually at the I.W.K. on June 19, 2014 by Doug Thorne, a child protection worker with the Department of Community Services Child Welfare office in Sydney and two police officers from the Cape Breton Regional Police Service.

[40] These interviews took place after the parents were advised a blood clot had been ruled out, and that C.D.'s injuries were non-accidental. The parents' version of events was canvassed, and a transcript of the interviews was tendered as evidence at trial. In these interviews, S.G. and J.D. both described much the same routine as they had with the I.W.K. physicians two days earlier.



### **The second interview with police**

[41] The parents were interviewed again on August 26, 2014 by Cst. Barrington of the Cape Breton Regional Police Services. Both parents were advised of their right to retain counsel and their right to refuse a statement. Both declined counsel and gave a further statement.

[42] In J.D.'s second interview, Cst. Barrington told him police suspected either him or S.G. of injuring C.D. J.D. denied causing C.D.'s injuries, though he offered no explanation for how she was injured. He seemed to accept that he would take the blame, as C.D. was in his care the morning of June 14, 2014.

[43] S.G. was also told in August, 2014 that she is a suspect in C.D.'s injuries. She too denied that she is responsible, but offered no explanation for the injuries. She told police J.D. had been lying to her about his drug use, and had stolen money from her, suggesting that he might be lying to her about C.D.'s injuries as well. However, she told police in the same interview that J.D. could not harm a child.

### **Differences in the versions of events**

[44] There are several notable inconsistencies in the versions of events given by S.G. and J.D.:

- S.G. stated in June (to both police and physicians) that she left home that morning at approximately 8:30 a.m. However, in August she told police and the social worker that she left by 8:15 a.m., as her drive arrived early. At trial she testified she left the home at 8:15 a.m.
- There are also differences in S.G.'s statements and evidence with regard to the time C.D. woke that day and whether S.G. fed her before leaving. Her evidence at trial was that C.D. woke at 6 a.m. but settled. She said she did not pick her up or feed her. She testified that she prepared a bottle, but when her drive arrived early, she gave the bottle to J.D. and placed C.D. in bed with him before leaving. However, S.G. told physicians in June, 2014 that C.D. woke around 6 a.m. and settled, then S.G. woke her sometime between 7 – 7:30 am to feed her. She said C.D. fed well.
- S.G. told police in June, 2014 that C.D. was eating fine, not fussy in any way on June 14, 2014. She also said she saw C.D. at the church and afterwards during photos, and noticed nothing wrong. She said C.D. wasn't

hard to wake and opened her eyes when spoken to. Yet at trial she said C.D. was lethargic and hard to wake for photos after the wedding.

[45] J.D. offered new evidence at trial:

- He testified that K.P. came to the home Saturday around 10:30 a.m. to drop off C.D.'s stroller. She testified she briefly went into the living room where C.D. was sleeping in her swing, but didn't wake her. J.D. did not mention her visit to the physicians, the police or social workers. K.P. confirmed this visit in her evidence.
- J.D. testified that S.G. took C.D. downstairs that Saturday morning, but the evidence between S.G. and J.D. differs on that point. S.G. denies she took C.D. out of the room; she says she left C.D. sleeping while she got ready. J.D. did not tell the physicians, police or social workers that S.G. left the room with C.D. that morning. He says he was not asked.

### **Credibility**

[46] Forgeron, J. set out the guiding principles of credibility assessment in **Baker-Warren v. Denault**, 2009 NSSC 59. I have considered several of those principles in assessing the credibility of the witnesses and the parents, in particular.

[47] As outlined above, there were a number of significant inconsistencies between the parents' statements provided and their evidence at trial. Counsel suggest it is easy to forget details when dealing with the stress of an emergency involving your child. While that may explain lapses when speaking with physicians initially, it is incredible to suggest either would forget important details when discussing C.D.'s injuries with police or social workers, particularly after learning that C.D.'s injuries were non-accidental.

[48] Both S.G. and J.D. have an interest in the outcome of the hearing, and have a motive to lie or twist the truth. The perpetrator could face criminal charges and risks termination of their parental relationship with C.D. One of them has lied by denying s/he injured C.D. If the other parent knows the role played by the perpetrator and has been protecting him/her, they too have a motive to lie or twist the truth.

[49] J.D. was visibly emotional at times during his testimony. And on occasion while listening to the evidence of S.G., he grew red in the face and appeared ready

to erupt. S.G. was also emotional, crying freely at times while testifying and when listening to the evidence of others. I recognize that demeanour is not a good indicator of credibility (see **Baker-Warren, supra**) and I place little weight on these observations in determining whose version of events I accept. J.D.'s demeanour was, however, consistent with someone who has difficulty regulating his emotions.

[50] Both parties made admissions against interest. J.D. was very candid about his illicit drug use. S.G. was candid about her poor choices in denying, yet maintaining her relationship with J.D. after June, 2014.

[51] However, S.G. was less candid when explaining why she chose to maintain a relationship with the man she alleges hurt her child, and why she told workers they had “split up”. She said she was “conflicted” and needed support after C.D. was taken into care. This is hard to believe when she could have sought support from her family. The evidence that she was protecting J.D. better explains her actions.

[52] I find S.G. started blaming J.D. for the abuse when it became apparent that her relationship with C.D. was at risk. Even then she lied, telling workers she and J.D. had “split up”. She knew this would be taken at face value, meaning they were no longer in a relationship. She denied an ongoing relationship when questioned by social works on a number of occasions. When questioned by the court what she meant by “split up”, her explanation was confusing and vague.

[53] In assessing credibility, I am entitled to accept all, part or none of a witness' evidence. I am not obliged to discount the evidence of a particular witness entirely, if parts of their evidence are unbelievable (see **Baker-Warren, supra**).

### **Evidence at trial**

[54] All of the witnesses who observed S.G. and J.D. caring for C.D., both before and after her hospitalization, confirmed they were loving and attentive to her needs. Nobody raised concerns about their care of C.D. before June, 2014.

[55] The maternal grandmother K.P. testified first. She said when J.D. dropped her off on Saturday, C.D. was “not herself”. K.P. first suspected a minor ailment such as a cold or infection. About an hour after J.D. left, she texted a note with her concerns to S.G., who responded in a rude and abrupt manner. K.P. then called J.D., who offered to take C.D. to the hospital if she thought it necessary.

[56] K.P. sought advice from a nurse friend and decided the situation wasn't urgent. She assured the parents she would monitor the situation overnight. There was evidence of texts back and forth about C.D.'s condition, but the parents stayed at the wedding reception. K.P. slept in the bed next to C.D.'s bassinette. She said C.D. had to be woken through the night to feed, and then she drank very little. She did not urinate much and cried when woken. K.P. testified that around 8 a.m., she texted the parents to ask them to collect C.D. and take her to the hospital, as there was something wrong with her.

[57] K.P. told the I.W.K. physicians about an incident several weeks prior where she was holding C.D. in one arm and items in the other hand. She dropped C.D. onto a padded sofa from a bent position after the baby started to wiggle out of her arm. This minor incident was discounted as a possible cause of C.D.'s injuries.

[58] K.P.'s husband B.P. testified. He was gone Friday and Saturday, returning Sunday morning just before the parents came to collect C.D. He and K.P. offered to take S.G. to Halifax, but she declined, stating she would go with J.D. He and K.P. went home, packed a bag and drove to the I.W.K. in Halifax. They arrived several hours before the parents.

[59] B.P. confronted J.D. at the I.W.K. after learning C.D.'s injuries were non-accidental, asking what he'd done. S.G. intervened and told him to leave J.D. alone. She said he and K.P. made J.D. "nervous". She told them to leave the hospital, saying she would ensure they were not allowed back.

[60] B.P. described S.G. as someone who reacts quickly and then calms down. He told police she did not handle stress well, and that before she became pregnant anything could "set her off". He said she would yell, stomp off and slam doors if she became upset, though he denied she threw things.

[61] B.P. said that after C.D. was born, S.G. matured and was less volatile. This is difficult to accept, given his evidence about her decision to leave his home in the middle of the night after an argument. She and J.D. left with C.D., moving in with her father. C.D. slept on an armchair after the move, because in their rush to leave, S.G. and J.D. left her bassinette at K.P.'s house. B.P.'s evidence is also at odds with his description of S.G.'s behaviour at the I.W.K., where she told him and K.P. to leave and banned them from returning. These are not the actions of a less volatile, mature person.

[62] B.P. also described an incident where he observed J.D. angry and shouting. He said J.D. wanted to take the baby to his parents' home in Dominion, but S.G. was tired and did not want to go. He described J.D. "storming" into the house, demanding to take C.D. with him. S.G. confirmed this incident. J.D. acknowledged it too, but he denied shouting or "storming" into the house.

[63] It is clear from the evidence of both K.P. and B.P. that they did not like J.D. or feel they knew him well. They blame him for C.D.'s injuries. It is also clear their relationship with S.G. was difficult. Both were guarded in their evidence, and tried to avoid portraying S.G. in a bad light. For example, K.P. described S.G.'s reaction to her text expressing concerns about the baby as "panicked concern". I reject that and find S.G.'s rude and profane reaction was not a reflection of panicked concern, but of impatience. It reflects her attitude towards her mother, whom S.G. described as overprotective and J.D. described as overbearing.

[64] I therefore view the evidence of K.P. and B.P. with caution, recognizing that they have an interest in protecting S.G. and continuing their relationship with C.D.

[65] Doug Thorne, a protection social worker with the child welfare office also testified. He was clear that when he met with S.G. and J.D. on June 19, 2014 that he told them C.D.'s condition was very serious. He told them she had not suffered a blood clot, but rather injuries caused by abuse.

[66] Initially, S.G. turned on her mother. It is not clear whether she blamed her for C.D.'s injuries, or whether this was a by-product of B.P.'s confrontation with J.D. in Halifax. In any event, S.G. was adamant that C.D. not be placed with K.P. in foster care. She supported placement with J.D.'s parents, although at trial she testified that J.D.'s father had physically and emotionally abused his own children.

[67] Mr. Thorne testified that in her first interview, S.G. denied causing the injuries to C.D. She suggested someone might be embarrassed or ashamed to admit they hurt her, a theory she repeated at trial. She raised the option and offered to take a "lie detector", an offer that was later retracted.

[68] Mr. Thorne concluded that the only people alone with C.D. in the 24 hours prior to her hospitalization were J.D., K.P. and S.G. At that time, he was not privy to the medical report which indicates the injuries were likely inflicted that Saturday morning. In the interviews he conducted at the I.W.K., he did not ask either parent whether S.G. was alone with C.D. the morning of June 14, 2014.

[69] Two police officers testified. They were present when the parents were interviewed on June 19, 2014. Cst. Barrington interviewed both parents again on August 26, 2014. The statements provided were tendered as evidence. Both officers confirmed that J.D. was the main suspect in their investigation, but that S.G. was a “person of interest”. They confirmed police have laid no criminal charges to date.

[70] S.G.’s father testified. He said his bedroom shares a common wall with the room occupied by S.G., J.D. and C.D. He said he did not see C.D. Friday evening when he got home, or the following morning. He heard someone, whom he assumed from past experience to be S.G., get up through the night around 3 or 4 a.m, then he heard S.G. leaving the house. He heard nothing unusual that morning.

[71] D.G. acknowledged that S.G. has difficulty handling stress. He too said that S.G. had matured since having C.D., though again this is questionable. D.G. confirmed he thinks it is unfair that everyone is “dumping” on J.D., as nobody knows for sure he injured C.D. Yet he also said J.D. must have inflicted the injuries, as S.G. had ‘nothing to do with it’.

[72] Long term protection social worker Amy Donovan testified. She confirmed that S.G. denied any ongoing relationship with J.D., even when confronted with information to the contrary on a number of occasions. However, J.D. confirmed on several occasions they were in contact. A nurse’s note from a urine sample taken from J.D. in November, 2014 indicated a girlfriend was present at J.D.’s home around 6:30 a.m. Ms. Donovan asked J.D. about this, and he confirmed S.G. was present. He said she was upset, stressed, and thinking too much. He did not want her to be alone.

[73] Ms. Donovan testified about her concerns in September, 2014 when S.G. called to cancel access, saying she was upset and needed a “mental health day”. She spoke about other concerns for S.G.’s mental health, referring to a text S.G. sent J.D. in which she threatened suicide, and S.G.’s suicide attempt at J.D.’s home using his medication in January, 2015.

[74] Ms. Donovan talked about other incidents between S.G. and J.D. which raised concerns and illustrate the dysfunctional nature of their relationship. These include drinking together despite the prohibition in the court order, and arguments where police were called.

[75] She also testified that J.D. was scheduled for collection of a hair sample for drug testing, but cancelled the first date and delayed rescheduling. His earlier urine tests were positive for drugs on two occasions, while S.G.'s tests were positive for alcohol on at least one occasion.

[76] Ms. Donovan confirmed that S.G. started to express doubts about J.D. in August, 2014 and eventually came to blame him for C.D.'s injuries.

[77] J.D.'s mother testified. She and her husband are providing care to C.D. under a kinship foster placement. She testified that S.G. would often call her after she and J.D. argued, very emotional and upset. She said she would confront J.D., only to find out his version of events was much different. She was frustrated by this, saying they were adults and should figure out their own problems. She said she was always left trying to figure out the real story, which echoes the evidence of Amy Donovan.

[78] She confirmed J.D. and S.G. were having ongoing contact after June, 2014. She said S.G. accompanied J.D. to her mother's funeral in Ingonish in February, 2015, staying overnight with him in a room she booked for them.

[79] She also testified that when J.D. was struggling with addiction before C.D. was born, he was "not himself". When he lived in their basement apartment, she described him yelling and storming out after arguments with his ex-wife. Yet she also testified that she had no concerns leaving C.D. with J.D. She said she didn't know he was using drugs in 2014, because there was no change in his demeanour.

[80] She testified that J.D. has a temper, and he and his father often argue over the business. She confirmed J.D. stole from the business to obtain money for drugs. He told her he may not have been a good son, but he is a good father. She confirmed J.D. told her that being a good father is all he has going for him. She also confirmed that her husband beat their older children with a belt when disciplining them.

[81] I find it hard to reconcile T.D.'s evidence that she observed changes in J.D.'s demeanour when he was abusing drugs before C.D. was born, but not afterwards. I must treat her evidence with care, as she too has an interest in the outcome of the hearing. If her son is found to have abused C.D. or failed to protect her, then her relationship with C.D. could be affected.

### **The Opportunity to Inflict Injuries**

[82] I accept Dr. McLaughlin's opinion that C.D.'s brain injuries were most likely inflicted the morning of Saturday, June 14, 2014. It most likely there was one incident of abuse that morning which caused all of C.D.'s injuries. Only two people had an opportunity to inflict injuries to C.D. that morning.

#### **K.P.**

[83] The maternal grandmother K.P. had C.D. in her care on Friday, June 13, 2014. Her husband was away that day and J.D. was working. S.G. was involved with wedding preparations. J.D. retrieved C.D. that evening after work, around 6 or 6:30 p.m. He brought C.D. home and put her to bed. S.G. and her father were still out.

[84] S.G. was clear at trial that she does not consider K.P. capable of injuring C.D. J.D. also rejected the idea that K.P. would abuse C.D. The Minister shares that view.

[85] I find K.P. was not likely responsible for C.D.'s injuries for the following reasons:

- She was the person who raised concerns about C.D. and insisted she been seen by a physician.
- She was very cautious (at times overly cautious to the point of overbearing) when caring for C.D.
- Further and more importantly, the I.W.K. team narrowed the timing for the infliction of the brain injury to the morning of June 14, 2014. K.P. did not have C.D. in her care after Friday evening.

#### **S.G.**

[86] There is some evidence to suggest S.G. had an opportunity to inflict these injuries the morning of June 14, 2014. That evidence comes from J.D. It was first presented at trial and was never mentioned to physicians, police, or the social workers.

[87] When S.G. spoke with the I.W.K. physicians in June, 2014 she said she woke C.D. to feed her. She did not specify where she fed her. If she took C.D.



downstairs that morning as suggested by J.D., she had a limited opportunity to inflict the injuries. However, it takes only a moment to lose one's temper and shake a baby.

[88] There are several reasons why S.G. could be the abuser:

- Her version of events has changed since she was first interviewed by the I.W.K. physicians. She appears to have distanced herself from any opportunity to provide care to C.D. that morning.
- In every version of events, it is clear S.G. was rushed that morning.
- She was described as having a history of outbursts, slamming doors and stomping around.
- Several people described her as someone who does not handle stress well.
- She did not react as one might expect (with an immediate and adamant denial) when told by police that she as a suspect in the case.
- Although her father was present in the home the morning of June 14, 2014, he would not necessarily have heard a child crying downstairs; everyone agreed that when C.D. did cry, it was low pitched. He also slept through K.P.'s visit at 10:30 a.m.
- J.D. was upstairs in bed that morning, but he was still half asleep, so he could have missed the sound of C.D. crying.
- S.G. was described as more mature since C.D. was born, but the evidence of her behaviour since June, 2014 and her relationship and interactions with J.D. does not bear this out.

[89] Counsel for S.G. argues the following facts demonstrate that S.G. was not the person who abused C.D.:

- S.G.'s version of events has been consistent throughout, namely that she did not handle C.D. before leaving that morning.
- J.D. never mentioned that S.G. left the room with C.D., or suggested she hurt C.D. at any time before the trial so his evidence is incredible.
- Both J.D. or D.G. were in the home that morning, and neither gave evidence they heard anything unusual or heard C.D. crying that morning.

**J.D.**

[90] J.D. also had the opportunity to inflict these injuries:

- He cared for C.D. alone that Saturday morning, as S.G. had left for the wedding. Although D.G. was asleep in the house, he did not hear K.P.'s visit, and likewise may have missed the sound of C.D. crying.
- J.D. was also alone with C.D. on the drive to Dominion, and for a couple of hours after he reached his parent's home. He testified there were children in the downstairs apartment, but they would not necessarily have heard a child crying upstairs, or done anything about it even if they had.
- J.D. had a broken foot at the time C.D. was injured. He was wearing a cast, which likely made it awkward for him to manoeuvre, and could have caused him frustration, which on top of his obligations to his father's business, could have boiled over when handling C.D.
- He was under a great deal of stress. He was managing his father's business in his father's absence, and he took that responsibility very seriously.
- He was described as a jealous boyfriend with a temper which S.G. likened to his father, whom she alleged was abusive to his own children.
- J.D. acknowledged he has thrown things when angry.
- J.D. acknowledged that he yells at employees, though he says not recently. He still gets "frustrated" at times.
- He did not react as expected when told he is a suspect in the case. He made no immediate, adamant denials. He let the investigator suggest a number of times he was the perpetrator without correcting him, though later in the interview, he denied causing the injuries.
- He told police that the only thing he had going for him was his role as a good dad, and that had been taken away from him, suggesting he no longer considered himself a good father.

[91] Counsel for J.D. points to several facts which run contrary to the suggestion he harmed C.D.:

- He invited K.P. into the home to see C.D. when she arrived with the stroller – if he'd hurt C.D. earlier that morning, why would he invite someone to see her soon after ?
- He held C.D. so that S.G. could see her as she walked down the aisle at the church - why would he ensure S.G. saw her, if he'd hurt C.D. in the hours before ?
- He mentioned concern about “weakness” to K.P. when dropping off C.D. - if he was the one who hurt her, why would he flag this concern with K.P., particularly when she was known to be hyper-vigilant about C.D. ?
- He offered to take C.D. to hospital after K.P. expressed concern – would he do that if he caused the injuries ?

### **Inferences**

[92] A significant factor on which the Minister relies in its case against J.D. is his drug addiction. He was self-medicating with methadone bought off the street when C.D. was abused. Before C.D. was born, he developed an addiction to pain killers for back pain, and was admitted to detox on three occasions.

[93] S.G. and T.D. both claim they saw no difference in his behaviour when J.D. was taking methadone. In particular, there was no evidence that J.D. became violent after taking methadone. However, it is clear from the evidence and his testimony that J.D. has a temper, he suffers from impulsivity and struggles with emotional regulation. Self-medicating with methadone, without the supervision of a physician, could exacerbate those characteristics.

[94] As his counsel correctly points out, the fact that J.D. was abusing drugs and lied about it to S.G. does not prove he injured C.D. However, combined with the other evidence, it raises a reasonable inference that he may have done so (see *Jacques Home Dry Cleaners v Nova Scotia (Attorney General)*, 2013 N.S.C.A. 4.

## **The Onus**

[95] The onus on the Minister to prove its case against the parents is a civil onus – on a balance of probabilities. Clear, convincing and cogent evidence must be advanced to tip that balance. I recognize the implications of a finding under s.22(2)(a) against either or both parents are serious. However, as the Supreme Court of Canada stated in **FH V McDougall** 2008 SCC 53:

“Like the House of Lords, I think it is time to say, once and for all in Canada, that there is **only one civil standard of proof at common law and that is proof on a balance of probabilities**. Of course, context is all important and a judge should not be unmindful, where appropriate, of inherent probabilities or improbabilities or the seriousness of the allegations or consequences. However, these considerations do not change the standard of proof.” [emphasis added]

[96] In order to enter a finding under s. 22(2)(a) of the *Children and Family Services Act* I must be satisfied that the child C.D. suffered physical harm inflicted by a parent **OR** caused by the failure of a parent to supervise and protect her adequately. This involves a two part analysis.

### **Part one - physical harm inflicted by a parent**

[97] I have found that C.D. suffered serious, non-accidental injuries the morning of June 14, 2014. At the time, C.D. was a very young, vulnerable infant who as totally dependent on others for her care and safety. C.D. was in the care of one or both of her parents overnight and in the early hours of June 14, 2014. She was in the care of her father after S.G. left for the wedding.

[98] Nobody has taken responsibility for C.D.’s injuries. The police have laid no charges. The parents knew after speaking with the I.W.K. physicians, the social workers and police in June, 2014 that unless K.P. was the perpetrator, one of them was responsible.

### **S.G. as possible abuser**

[99] J.D. has not accused S.G. of injuring C.D. However, he did testify that she left the room that morning with C.D., suggesting she had the opportunity to inflict the injuries. Other than this suggestion, he has offered no explanation for C.D.’s

injuries. Of the two parents, he is the one suspected by police and social workers of having abused C.D.

[100] If I accept J.D.'s evidence that S.G. took C.D. out of their room that morning, then S.G. had a brief opportunity to inflict the injuries on C.D. His evidence may be consistent with S.G.'s initial version of events given to the I.W.K. physicians, recounted only days after C.D. was hospitalized. She told physicians she woke C.D. to feed her. She may have taken C.D. out of the bedroom to feed her, allowing J.D. to sleep.

[101] If C.D. was taken out of the bedroom and became fussy during S.G.'s rush to get ready on June 14, 2014, S.G. might become frustrated and injured C.D. The friend who picked S.G. up that morning did not testify, so there is no evidence of her demeanour when S.G. left the house.

[102] Dr. McLaughlin testified it was possible for someone to see C.D. shortly after she was hurt, but not notice a problem. If S.G. abused C.D. before she left, J.D. might not have noticed anything unusual when C.D. was put in bed with him.

[103] There are a number of facts which support the possibility that S.G. was the perpetrator:

- S.G. was almost solely responsible for C.D.'s care while J.D. worked long hours.
- D.G. provided little support to S.G. with the baby, as he worked odd hours.
- K.P. had provided a lot of support to S.G. when C.D. was born, but S.G. and K.P.'s relationship was strained after they moved to D.G.'s home.
- S.G. did not handle stress well.
- D.G. heard her get up overnight; she could have taken C.D. out of the room then, or later when she was getting ready to leave.
- She was rushed that morning.

[104] If these factors led S.G. to abuse C.D., then J.D. was aware of them and may have failed to supervise and protect the child adequately. In that scenario, his decision to continue his relationship with S.G. would be difficult to understand.

**J.D. as possible abuser**

[105] S.G. did not raise concerns about J.D. until several months after C.D. was hospitalized. At trial, she made it clear she now accuses J.D. of abusing C.D.. She said she initially defended J.G. because she was worried he might go to jail, and she was worried about how that would impact his relationship with his two other children. She did not seem to recognize that protecting J.D. might impact her own child's future.

[106] And despite her assurances to police and social workers that they had ended their relationship, S.G. and J.D. continued to see and communicate with each other regularly. They went camping together and were intimate on a number of occasions. They drank together, despite a prohibition in the court order to refrain from alcohol use. There is also evidence of several altercations, including one incident where S.G. attempted suicide at J.D.'s home by taking his pills.

[107] It was not until August, 2014 that S.G. suggested she had doubts about J.D., and whether he might be capable of inflicting these injuries on their child. By then, she had realized that her long-term relationship with C.D. was at risk. Even after that, their relationship continued. S.G. hid it from the agency, though J.D. told workers they were still seeing each other. At trial, S.G. made it clear she blames J.D. for the abuse of C.D.

[108] If J.D. was the abuser, it is possible that others such as K.P. and S.G. could have seen C.D. after she was injured and notice nothing. In particular, I note that K.P. did not lift C.D. out of her swing that morning, and J.D. was the parent who held C.D. after he arrived for the wedding, during the photos and until she was dropped off at K.P.'s home.

[109] J.D. had ample opportunity to harm C.D. He cared for her alone most of the day, whereas S.G. had only a limited opportunity that morning, while two other people were in the home.

[110] In relation to the questions posed by J.D.'s counsel in refuting the possibility J.D. was the perpetrator, I would point out:

- A parent who shakes a child may not realize the damage done, and could assume when a child shows no immediate bruising or injury that there was none, which may explain why J.D. allowed K.P. to see C.D. when she dropped in. Or he had not yet inflicted the injuries when K.P. dropped by.

- The medical evidence indicates a person may not see symptoms of abuse, such as irritability or lethargy right away. If C.D. was not yet exhibiting symptoms, J.D. would not hesitate to show her to S.G. as she entered the church.
- His comment to K.P. about C.D. being “weak” could have been a way to deflect responsibility, as C.D. was displaying symptoms when he dropped her off. He knew K.P. would notice something wrong.
- He may have offered to take C.D. to hospital when K.P. contacted him, because by then he realized that C.D. had suffered injuries which needed medical attention.

[111] We will never know the full story. However, I am satisfied that a finding under s.22(2)(a) should be entered against J.D. in all of the circumstances of this case. Having reached this conclusion, I must consider whether a finding should also be entered against S.G. for failing to supervise and protect C.D. adequately.

### **Part two - failure to supervise and protect adequately**

[112] S.G. acknowledges that her choice to maintain an intimate relationship with the man she says caused C.D.’s injuries is difficult to understand. She insists they “broke up” while in Halifax in June, 2014, yet acknowledges they maintained relations afterwards. She tried to characterize theirs as simply a supportive relationship, but I reject that suggestion. Theirs was an intimate relationship marked by dysfunction and violence.

[113] S.G. acknowledged at trial that she has made bad choices. She was told the agency must be satisfied she can and will protect C.D., if the child is returned to her care. She agreed it is the role of a parent to protect a child from harm. She knew J.D. was using methadone by March, 2014. She acknowledged she saw texts which suggested the methadone was not being prescribed through a doctor or pharmacy, but asked no questions. She says she would not have left C.D. with J.D. if she had known about his illegal drug habit. She acknowledges that she should have asked questions, but did not.

[114] The question of whether S.G. knew the risk J.D. posed to the child is important to a finding that she failed to supervise and protect C.D. She claims she knew when he was lying, but yet she ignored several warning signs:

- J.D. is a drug addict. She knew he was taking methadone and the source of that drug was questionable.
- She had suspicions he had used drugs around his other children.
- She had suspicions he stole money from her to buy drugs in December of 2013.
- She knew J.D. had a “crazy” temper and was jealous.
- He argued with her in front of his other children, and the situation escalated to the point police were called.
- He was stressed with managing his father’s business.
- He claimed his own father had abused him.

[115] S.G. had options for childcare the day of the wedding; her mother offered to take C.D. Instead she allowed J.D. to collect the baby late Friday, after a long day at work while she was preparing for the wedding. She left C.D. with J.D. again the next morning, knowing he would be responsible to care for C.D. all day alone. This involved feeding, changing, dressing and entertaining C.D., dressing himself, and packing C.D.’s overnight bag, all the while ambulating in a cast, and dealing with business issues before his father left on holidays.

[116] S.G. appears to have idealized her relationship with J.D. Her father testified that she and J.D. were engaged to be married, and planning to move into the home J.D. was renovating. Neither S.G. or J.D. testified that they were ever engaged to be married, but her father was led to believe that. And S.G. testified “this” should not be happening to her, meaning she should not be involved in a child protection proceeding. She does not understand why she is not enjoying life as a new mother of a beautiful child, living with the man she loves in their own home. Her focus throughout her evidence was on the impact this proceeding is having on her life, rather than C.D.’s future.

[117] S.G. told social workers that she was afraid of J.D., yet she continued the relationship even after C.D. was born. She testified that she was angry at J.D. for lying to her before she went into labour. Yet once C.D. was born, she said she forgot her anger completely. She allowed J.D. to live with and parent C.D. as if there were no concerns.

[118] S.G. was only 21 years old when she became pregnant with J.D. He is several years older than her and was separated from his wife when they started



dating. S.G. was involved in a prior relationship that turned violent. She knew J.D. was volatile. They had a nasty argument in February, 2013 at which time J.D.'s two other children were present. During the argument, J.D. took her cell phone, so she took refuge in the bathroom and called police from the house phone. She testified that J.D.'s two other children were present and extremely upset. She ignored all these risk factors when she left C.D. with J.D. on June 14, 2014.

[119] Counsel for S.G. argues that there is an important difference between knowing your partner has problems, and knowing he is a risk to your child. This is true. But she also suggests it was not foreseeable to a reasonable parent that J.D. might harm their child. This suggestion appears to flow from the wording used in of s.22(2)(a) – a parent must “supervise and protect the child **adequately**”.

[120] I could find no case law which considers and defines the word “**adequately**” in the context of the *Act*. It is clear the *Act* does not impose an absolute requirement for parents to supervise and protect their children - their efforts must be adequate in the circumstances. This requires consideration of the risks known to the parties at the time the child is harmed. What is adequate in one case may be insufficient in another. Foreseeable risk is one way to characterize the analysis.

[121] Having considered all of the evidence, I reject S.G.'s submission that the risk to C.D. was not foreseeable. She was aware (or wilful blind) to the risk posed by J.D. Her relationship with J.D. was violent before C.D. was born. It did not become dysfunctional after C.D. was injured. She failed to supervise and protect C.D. adequately in the circumstances.

### **Findings**

[122] Having considered all of the evidence and submissions, I find on a balance of probabilities as follows:

- C.D.'s injuries were inflicted while she was in the care of her parents.
- All of C.D.'s injuries occurred at the same time.
- C.D. was abused the morning of June 14, 2014.
- Of the two parents, it is most likely J.D. inflicted the injuries on C.D.
- S.G. failed to adequately supervise and protect C.D.

## Caselaw

[123] In deciding whether it is appropriate to enter a finding under s.22(2)(a) against both parents in these circumstances, I have reviewed and considered several Nova Scotia cases:

- In *Children's Aid Society of Cape Breton-Victoria v L.D.*, 2009 NSSC 352 MacLellan, J. entered a finding against both parents where the child sustained non-accidental injuries while in the care of her parents, yet no explanation was provided by either.
- In *L.D. v. Children's Aid Society of Cape Breton-Victoria*, 2010 NSCA. 64, which was an appeal of a related case, the Court noted:

“While each parent denied causing the injuries, at a minimum they failed to protect D. from harm and did not accept she was injured in their care. The issue was whether they failed to protect her from harm.”

- In *Minister of Community Services v. F.M.*, 2009 NSSC 366 (upheld on appeal 2010 NSCA 37) Gass, J. found that the non-accidental injuries were sustained by the child while in the care of the parents. The Court concluded that:

“...it [the injury] had to be inflicted by one of the parents and the other parent did not, would not, or could not protect the child from physical harm by the other parent.”

[124] Had I been unable to determine which of the two parents was more likely to have abused C.D., I would enter a finding against both S.G. and J.D. under s.22(2)(a). They have failed to explain C.D.'s injuries, in circumstances in which one or both knows what happened. At a minimum, they both failed to adequately supervise and protect her.

## Conclusion

[125] The Minister has met the onus of proof in this case. There is clear, convincing and cogent evidence to support the finding that C.D. is a child in need of protective services under s.22(2)(a) of the *Children and Family Services Act*. She suffered serious, non-accidental injuries while in the care of her parents. Neither S.G. or J.D. has accepted responsibility for the injuries C.D. sustained

while in their care. I find that J.D is the parent more likely to have abused C.D. I also find that S.G. failed to supervise and protect the child adequately in the circumstances. As such, the finding under s.22(2)(a) is made against both of the parents.

MacLeod-Archer, J.