IN THE SUPREME Court OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Nova Scotia (Community Services) v. J.G., 2006 NSSC 44

Date: 20060309
Docket: SFH C.F.S.A.-038903
Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

J. G. and J. C.

Respondents

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

Section 94(1) provides:

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

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

Judge: The Honourable Justice Kevin Coady

Heard: in Halifax, Nova Scotia
January 9, 10, 11, 12, 13, 17, 2006

Written Decision: March 9, 2006

Counsel: Richard Arab, for the Applicant
Kelvin Gilpin, for J. G., the Respondent
Kenneth Armour, for J. C., the Respondent

Coady, J.:

Background:

[1] J. G. was born in Halifax on September [...], 1986. She was raised by her mother in an extremely unstable family situation. Her early years were marked by chronic physical and emotional abuse and neglect. Her mother was so self absorbed, irritable and emotionally unstable that she was unable to nurture J.. She spiralled out of control during her early years. Consequently, she was placed in the permanent care of the Minister when she was 12 years old. She remained a ward at the commencement of this proceeding.

[2] When J. was nine/ten years old she began to exhibit marked defiance and increasingly aggressive and violent behaviours. Various facilities and treatments were tried without success. J. was ultimately housed in a hotel room under the 24 hour supervision of two caregivers. She assaulted one of those caregivers so badly that the woman required hospitalization. J. eventually exhausted all of the age appropriate placement and treatment options available in Nova Scotia. In the absence of a secure facility suitable for an out of control child of twelve, the Agency had no alternative but to seek an out of Province placement.

[3] In 1998 J. was placed with [...] Services for Children in [...]. It was hoped that this placement would contain and resolve her anger and violence. After six years at [...] there were no improvements in J.'s behaviour. If anything she was becoming more dangerous and uncontrollable. Additionally she began using hard drugs such as cocaine, crystal meth and speed.

[4] J. C. was born in [...] on May [...], 1986. He grew up without a father figure in his life. His mother was addicted to alcohol and drugs and was openly promiscuous. They lived at various locations around Nova Scotia and in the late 1990's relocated to [...]. J. was not successful in school and was often expelled for behavioural reasons. He lived a life of poverty. He associated with a poor crowd and became involved in petty thefts and a serious high speed chase. He was free to run the streets and do pretty much as he pleased. Drugs became part of his life.

[5] J. and J. met at school in October, 2003. They both exhibited immature attitudes towards their relationship. J. developed an obsessive interest in J.. Their early relationship resulted in significant regression in all other aspects of their lives. J. was consistently on the run from her foster home. She failed to attend

school and became further involved in drugs. J. was without focus save for his relationship with J.. In time they moved into J.'s mother's home. This was far from a stable or structured environment because of J.'s mother's alcoholism, recurrent absences and the presence in the home of drug users and dealers.

[6] In June, 2004 J. and J. moved into a small cabin on a defunct motel setting. They continued to abuse crystal meth, cocaine and speed. They had little income, ate poorly and were not attending to their personal hygiene. They lived in squalor. They acquired pets but were incapable of caring for them.

[7] In August, 2004 J. realized she was five weeks pregnant. J. and J. have since claimed that they quit drugs "cold turkey" upon learning of the pregnancy.

[8] It was around this time that J. started discussions about a return to Nova Scotia to legally terminate her wardship. Her biological mother began to advocate for her return and offered to accommodate J. and J. in her home. The Agency got onside and paid airfare to relocate J. and J. to Nova Scotia. Within 10 days this placement was "on the rocks". In late October their mutual antipathy resulted in a

physical altercation and the placement fell apart. In November, 2004 J. and J. moved into a one bedroom apartment

[9] The social workers, Mr. Tufts and Ms. Boyce, offered J. and J. a wide range of support services. The focus of these services was to prepare for the parenting role. They ignored these offers of support. Consequently a referral was made on behalf of the unborn child to the appropriate protection agency. This resulted in J. and J. making a short, half-hearted attempt to cooperate with agency personnel and the services offered.

[10] Baby boy D. was born on April [...], 2005. On May 4, 2005 a protection application and notice of hearing issued. The Applicant relied on Section 22(2)(b), (g) and (ja) of **The Children and Family Services Act.**

[11] I find as fact that the Agency decided to intervene in this young family as a result of the following concerns:

- J. and J. were teenagers without family or community support. They lacked education, employment and life skills and were behaviorally and

emotionally immature. Their ability to provide for themselves did not bode well for their infant.

- Their personal relationship was so conflictual that it was an obstacle to parenting and would inevitably cause emotional harm to their son.

- J. had a long-standing history of extreme violence and there were concerns that the stress of a newborn would result in a repeat of that behaviour, either generally or within the family unit.

- The Respondents had a recent history of hard drug use on a daily basis. They had not addressed the issue of addictions, either personally or therapeutically.

- J. presented as so self-centered that there were concerns she would resent J. if he showed more attention to the baby than to her.

- J. and J. possessed no parenting skills whatsoever and they rejected this assistance offered by the family skills worker.

- They rejected all services offered as a result of the Agency's refusal to provide them with a larger apartment. They advanced the position that they were not cooperating because there was nothing in it for them.

- J. and J. had refused to participate in the pre-natal classes offered by the Agency and did not have a credible reason for their non-attendance. They did pursue an abbreviated course offered through a single parent centre not accountable to the Agency.

- J. and J. were not capable of maintaining sufficient food for themselves. They had no sense of budgeting. Their rent had to be paid to the landlord by Social Assistance. There were concerns that their child would experience malnutrition.

[12] It is not uncommon in child protection cases for young parents to possess these types of deficiencies. Proper support can overcome these shortcomings. However, in this case, the Respondents refused to recognize these needs and

steadfastly opposed the assistance offered. The Agency hoped that intervention would result in a change of attitude.

Post Apprehension History:

[13] The Agency continued to offer assistance to J. and J. after D. was born. These efforts focused on developing life and parenting skills and addressing addictions. The worker, Mr. Tufts, reported that the Respondents showed little interest in these efforts.

[14] Andrea Boyce took over the file from Mr. Tufts. In addition to her own efforts, she retained a family support worker and offered counselling services. J. and J. showed little interest in participating. They reported that they saw little value in taking advantage of these offerings. They always had excuses for non-attendance.

[15] After D.'s birth, Ms. Boyce continued to be very concerned on a number of fronts. She was disturbed by this couple's lack of follow through with services. She found their focus to be self-centered without a sense of where their lives were

going. Additionally, there were real concerns about J. and J.'s relationship. They were continually embroiled in conflict and they lacked any communication skills. They had no insight into any of their shortcomings and were defiant when pushed by figures representing authority. Ms. Boyce noted that J. refused to be accountable for her difficulties.

[16] Once D. was born, it was apparent that J., and to a lesser degree J., lacked any nurturing skills. Ms. Boyce found that J. could not put her child's needs first. She was much more interested in a power struggle with the Agency. Ms. Boyce noted that J. often referred to the unborn child as "it" and later as a "fucking newborn". She stated that "This baby is not going to hold me up." and "I am not going to share my bedroom with a baby." It was very clear to Ms. Boyce that J. had no idea what was required to care for an infant. It was also clear that she was unreceptive to assistance in addressing her shortcomings as both a person and a parent.

[17] J. C.'s approach to parenting was best articulated by the assessor, Suzanne Eakin, at page 57 of her report:

> The predominant concerns about J. at the present time are that he fantasizes about having a wonderful family life from here on in with his partner and child, but has taken almost no proactive measures that might allow for greater stability in his lifestyle, mental health functioning or relationship difficulties, that would, in turn, be critical to his appropriate functioning as a parent.

[18] The Assessor concluded that "J. just goes along for the ride." and I accept that as a fair comment on his role in this family.

Random Drug Testing:

[19] The evidence clearly established that J. and J. were users of dangerous substances while living in [...]. They both testified that they ceased using drugs when they learned that J. was pregnant. Notwithstanding, the Agency in Nova Scotia was concerned about ongoing drug abuse and the Respondents' veracity on this issue. Random urinalysis is a tool utilized to address substance abuse.

[20] Mr. C. testified that he used and sold drugs "in the past" and denied use since relocating to Nova Scotia. It was his evidence that he was never asked to do drug testing but he was now prepared to submit. He told the Court that he came to realize that drug use was a very serious concern. He acknowledged that he did not get any counselling in this area.

[21] The Agency running file (Exhibit 16, page 103) was at variance with Mr. C.'s evidence. Mr. C. was referred to the following citation:

> [Ms. Boyce] I advised J. and J. that this service was available and asked if they would participate. J. immediately said, "No, I'm not breastfeeding now." and J. in a very hostile/angry tone asked if it was Court ordered.

[22] I find as a fact that Mr. C. purposely avoided urinalysis. I do not conclude that he continued using hard drugs since moving to Nova Scotia. However, it was his express choice, for whatever reason, to not cooperate with the testing. That decision did little to allay the workers' concerns.

[23] Ms. G. testified as to the seriousness of her drug use in [...]. She admitted to using crystal meth every day for five months. Yet, she did not feel that substance abuse was a current issue and was non-committal about random urinalysis. Debra Rodgers, an Agency worker, testified that J. agreed to random testing in June, 2005 but that it ended very quickly.

[24] The affidavit of Debra Rodgers (Exhibit # 9) indicates that between May 25 and May 30, 2005, the collecting nurse attended at the Respondents' home on

three occasions. On two occasions, Ms. G. refused to provide a sample and on one occasion provided a sample that was insufficient for screening purposes. It was as a result of the Respondents' position that access became supervised and shortened. In light of the shorter visits, supervision of visits, no breastfeeding, and the lack of evidence of drug use, the Agency did not further push urinalysis.

[25] I find that the above amounts to an example of the Respondents putting their personal interests ahead of D.'s interests in a stable home environment. This is a theme that permeates most aspects of this case. It reflects the Respondents lack of maturity.

Couples Counselling:

[26] This was a lengthy trial and a prominent theme has been the Respondents' bickering with each other. This behaviour was observed by all of the professionals involved in their lives since moving to Nova Scotia. They all shared the concern that this conduct would negatively impact D.. The Respondents shrugged it off as inconsequential. They testified that their bickering was nothing more than their chosen way of communication. They resisted all efforts to address this behaviour. They had no insight into the effect of their behaviour on D..

[27] The Agency was hopeful that J. and J. could parent if they would address their relationship difficulties. It was apparent that they truly loved their son and could, with support, provide for D.'s basic physical needs. It was hoped that a correction in their relationship would result in a better joint effort at parenting. It was observed that individually the Respondents were more effective at parenting than together. The Agency determined that couple counselling was needed and agreed to put it in place in the person of Martin Whitzman.

[28] Mr. Whitzman is a very experienced family therapist with extensive involvement with young parents. I accept Andrea Boyce's evidence that the Respondents did not see any value in such counselling. They offered feeble excuses for non attendance. They held out their request for a larger apartment as ransom for counselling. I find this was one more example of the Respondents putting their own interests ahead of D.s.

[29] I accept Mr. Whitzman's evidence that the Respondents missed many scheduled appointments. Also, when present, they did not effectively participate

in the sessions. The evidence establishes that J. and J. used these sessions to vent about the Agency's intervention in their lives.

[30] I accept Mr.Whitzman's testimony that the Respondents showed no understanding of the kind of problems that existed in their relationship. He stated, and I accept, that the only reason they attended was because the Agency made them go.

[31] This was another example of the Respondents attempting to get the Agency off their backs rather than partnering with a view to family reunification. In fact, I find that the Respondents felt that all of their problems were the result of Agency involvement rather than vice versa. J. stated in her evidence that she did not feel that Mr. Whitzman's sessions were "beneficial" and that when she attended she went because "I had to go.".

[32] Mr. Whitzman provided five reports (Exhibit # 3). The first dated May 5, 2005 referenced sessions prior to D.'s birth. He concluded "The first few sessions with J. and J. were not therapeutically productive as the clients tended to use the sessions to vent or complain" ... "Changes are required and I am hopeful that the

birth of this baby will finally create the necessary conditions that will encourage the changes."

[33] Mr. Whitzman's report dated May 8, 2005 reflected on the protection application filed after D.'s birth. While he acknowledged some "coming together", he was concerned whether this positive movement will continue in the face of the stress associated with starting a young family. Mr. Whitzman stated "Stress tends to erode the ability to logically handle a situation and instead, creates a situation where individuals tend to respond emotionally and impulsively. In other words, J. and J.'s ability to work as a team will be put to the test as their daily stress becomes a factor. Unless they have acquired the necessary skills, there will be a tendency to attack each other, both verbally and emotionally."

[34] While there were some improvements throughout the summer of 2005, they did not last. Mr. Whitzman's report dated September 3, 2005 concluded that "J. and J. are gaining little from the counselling and my involvement has reached a standstill, they do not report a need for change and deny any tangible issues which I could focus on altering." This was the end of Mr. Whitzman's involvement with the Respondents.

[35] It was clear from the evidence that J. and J. failed to take advantage of Mr. Whitzman's assistance. That is born out by the fact that their "bickering" approach to communication and parenting continued to the point where access to D. had to be exercised separately.

Therapy - J. G.:

[36] J. G.'s life to date can only be described as tragic. Past events beyond her control have created a damaged young woman. Recent choices and behaviour indicate she has done little to improve her psychological situation. The professionals determined early on that if she did not address her challenges, it was unlikely she would face a positive future as an individual, a partner or a parent.

[37] The assessor, Ms. Eakin, found many factors that explained Ms. G.'s behaviour over the years. She determined that J. was "massively" exposed to violence during her formative years. This precluded the establishment of a stable affectionate bond with any caregiver and was responsible for the attachment issues now experienced by J.. Additionally Ms. Eakin found that J. did not experience

any remorse for her actions and was entirely self-centered. Ms. Eakin also determined that J. was "poorly amenable to advice". She offered the following conclusion at page 41 of her report (Exhibit # 2):

> The risks in this case are neither trivial nor easily rectified, even if J. were highly committed to personal change, which she does not appear to be.

[38] Ms. Eakin found that J.'s problems were extremely entrenched and she refused to look back. She chose to ignore her history and was not interested in therapy. I find that to the time of the trial, J. had not worked through her issues and she continued to refuse revisiting in any way. She only accepted help if it was on her terms.

[39] In September, 2005 a parental capacity assessment was completed by Suzanne Eakin. It was highly critical of the Respondents. It highlighted J.'s failure to therapeutically address her long standing issues. J. responded by requesting a female counsellor. She told the worker, Debra Rodgers, that after reading the parental capacity assessment she realized she had to deal with her issues. Ms. Rodgers retained Peggy Beaton. Ms. G. did not make any scheduled appointment with Ms. Beaton.

[40] This experience with Ms. Beaton was but one more example of the failure to follow through on the part of Ms. G.. It was yet another example of J.'s self interest trumping D.'s needs.

Family Support Worker:

[41] The Respondents were expecting D. in their teen years and as such they lacked any parenting skills. Added to this was the fact that they had no family support in Nova Scotia. This was further complicated by the Respondents inability to recognize these shortcomings. Gloria Kennedy-Inkpen was retained to be this couples family support worker. Ms. Kennedy-Inkpen's report dated February 25, 2005 concluded that they would have difficulty focussing one hundred percent on a newborn and putting aside relationship and individual issues. She offered the following prognosis:

> I feel, if the enthusiasm demonstrated by both parents ... were to continue, the couple could possibly achieve the skills necessary over a period of time to provide a safe, nurturing environment for the child. It would be necessary for the couple to attend couple counselling, be open to receiving intense parent education, improve their ability to budget finances to ensure they are able to provide the basics for a child, as well as cooperate with the Agency."

[42] The above conclusion represents a somewhat optimistic view of the couples future. Its fulfilment depended on the Respondents follow through in a number of areas. Unfortunately, a review of the trial evidence does not disclose that the Respondents were able to follow through in the following respects:

- The Respondents' enthusiasm just before D.'s birth was not continued after his birth.

- The Respondents did not develope a nurturing environment for D..

- Couple counselling did not result in any meaningful progress in their personal relationship.

- The Respondents refused to be involved in any personal therapy to address their historical limitations.

- The Respondents did not demonstrate an interest in pursuing parent education.

- The Respondents did not show a willingness to improve their budgeting skills.

- The Respondents did not cooperate with the Agency.

[43] I find as a fact that the Respondents parenting skills were no better at trial than at the time D. was taken into care. This is a product of their attitude towards Agency involvement and their rigid unwillingness to be told what to do. They knew what had to be done but were unwilling to make the compromises that could lead to D.'s return. Again, it is an example of their not being able to put their interests behind those of D..

D.'s Health:

[44] D. has experienced a number of health difficulties in his life. Initially he had problems related to weight gain as a result of reflux. There have been respiratory complications requiring medication. In his early life he experienced bouts of uncontrolled shaking. While these conditions were not always

attributable to the Respondents, their response disclosed, once again, their unwillingness to accept help and advice from professionals. This was further exacerbated by their attitude that they knew more than the doctors.

[45] When D. was diagnosed with a reflux condition, and when the Respondents were instructed on how to burp him, Ms. G. advised that D. never threw up when he was in their care. She insisted that the problem was not reflux but rather attributable to the nipples on the foster parents' bottles.

[46] Respiratory difficulties were a concern to D.'s physicians. It was determined that there was a family history of asthma. The Respondents were alerted to the risk factors being cats, dust and smoking. The evidence disclosed that the Respondents both smoked around D. and kept poorly maintained cats. The cats and smoking were for their benefit and they ignored the concerns regarding D.'s health.

[47] The bouts of shaking were thought to be the result of drug use later in the pregnancy. This possibility was denied by J. and J. who insisted that drug use stopped five weeks into the pregnancy. When D. was referred to a pediatric

neurologist, J. insisted that D. never shook when he was with them. This was refuted by the worker who had observed shaking when in the care of his parents.

[48] The Respondents were instructed on feeding D. in such a way as to minimize reflux symptoms. They were not able to prepare the feeding solution. Consequently it was necessary for the worker to get the foster parent to make up pre-mixed bottles of formula.

[49] I have concluded from these health contacts that the Respondents felt threatened and intimidated by the involvement of health professionals in their family. They were reluctant to partner with these professionals much as they failed to partner with Agency personnel. Given the Respondents lack of maturity, I am concerned that they might not utilize medical services in the future. I find on a balance of probability that they might not utilize medical services so as to avoid Agency intervention.

Access:

[50] It is statutorily mandated that family reunification is a goal in the proceedings. In the most serious cases access may be strictly supervised. In less serious cases access may attract minimal supervision. Access serves as a link to reunification in that it maintains parent-child relationships through the life of the process. The Agency viewed access in the same light but also saw access as an opportunity for parents to demonstrate their commitment to their children. Minimal intervention in access usually indicates an Agency effort at earlier family reunification.

[51] Susan Rhymer was the principal access facilitator in this proceeding. She testified that access to D. was initially partially supervised. It was her practice to drop in on the parties for six hours, three or four times per week. Martin Whitzman described this initial access as “very liberal” and felt that the schedule envisaged a return of D. to J. and J.. He testified that in his experience access regimes are seldom so liberal. I conclude from this evidence that the Agency envisaged a dismissal of this proceeding once the parents were able to address a number of risk factors.

[52] J. and J. were not able to capitalize on the initial access regime. Agency concerns were not being addressed by the Respondents. Foremost was the constant bickering and verbal abuse in D.'s presence. It got to the point where the worker, Ms. Rodgers, advised them that access would be terminated if they did not stop the conflict during access. The Respondents were unable to curtail their behaviour, and as a result separate access visits were instituted in December, 2005. This was still the arrangement at the time of trial.

[53] The Respondents approach to access did not amount to child centered contact. It was another example of allowing their own needs to trump those of their son.

[54] Martina Legere was the access facilitator for a short period in late 2005. She reported that at every visit J. walked around in a tantrum, often stomping her feet and slamming doors. She found J. to be very unpleasant during most visits. She stated that this behaviour made D. tense.

[55] This access evidence is very significant. J. and J. were well aware that they would effectively be under a microscope during access times with D.. They were

aware that their behaviour could either result in D.'s return or not. Yet, they were unable to modify their conduct so as to meet the expectations of the Agency. This conclusion does not bode well for the Respondents anticipated conduct when not subject to Agency scrutiny.

Dr. Joseph Dooley:

[56] Dr. Dooley is a pediatric neurologist at the IWK Hospital. He was called by the Applicant to address possible causes of D.'s tremors. It was his opinion that *in utero* drug exposure could have been the cause of D.'s condition. He testified that the earlier the fetus' exposure to drugs, the more severe and long lasting the symptoms. If the exposure is late in the pregnancy, the newborn will show withdrawal symptoms.

[57] Dr. Dooley first saw D. on July 14, 2005 at two months of age. While he found the jitteriness quite remarkable, a neurological examination produced a normal result. He then saw D. on September 19, 2005 at four and one-half months of age. He diagnosed the tremors as improved and found D. to be developmentally appropriate. On November 1, 2005 Dr. Dooley performed an EEG which produced normal results.

[58] Dr. Dooley concluded that D.'s tremors amounted to withdrawal symptoms. He stated that he could not find any other reason for D.'s condition. This flies in the face of the Respondents evidence that drug use stopped once they realized J. was pregnant.

[59] There was no evidence of significant drug use during the Agency's involvement with the family.

[60] The Respondents drug use before D.'s birth was severe, both in terms of substance and frequency. I have great difficulty accepting that these parents, with their challenges and lack of support, stopped "cold turkey". I conclude on a balance of probabilities from Dr. Dooley's evidence that D. was suffering withdrawal symptoms at birth. I, therefore, make the further conclusion that the Respondents continued with some drug use after their return to Nova Scotia. They may be clean presently and the evidence supports that conclusion, however, they have not received any treatment, and as a result, drug use remains as a significant risk factor to be considered.

Dr. Ewa Szudek:

[61] Dr. Szudek is D.'s pediatrician. She found him to be excessively irritable, crying and jittery at birth. She has extensive expertise in diagnosing and treating children exposed to drugs and other substances during pregnancy. She testified that drug use early in a pregnancy can lead to structural brain damage and leaves no withdrawal symptoms. A neurological exam at five/six months disclosed no structural damage. She concluded that D.'s condition would suggest late pregnancy drug use. A later exam on December 9, 2005 was normal and there was no longer evidence of withdrawal.

[62] Dr. Szudek's evidence is consistent with Dr. Dooley's. It is inconsistent with the Respondents' evidence. It highlights the ongoing risk of substance abuse. While it may be contained presently, the lack of treatment does not bode well for full recovery. The stressors of raising a son, in the circumstances of the parties, would undoubtedly increase the risk.

Parental Capacity Assessment:

[63] Suzanne Eakin's assessment was completed on August 29, 2005. It resulted in access limitations and ultimately the decision to seek permanent care of D.. It disclosed a number of characteristics that bear heavily on this analysis:

- J. never had a stable affectionate bond with any of her primary caregivers and as a result had major trust and attachment issues.

- J. experienced no remorse for the extreme violence in her past. She lacked empathy.

- J. and J. were not financially responsible.

- J. was "poorly amenable to advice" in any subject area.

- J. failed to grasp that her child's welfare must take priority over any other considerations.

- J. and J. accepted no responsibility for their current difficulties.

- J. and J. saw D. as a resource to themselves.

- J. and J. had a dysfunctional parental relationship. They could not handle rejection from each other. This pregnancy was a way to cement their relationship.

[64] These were very serious conclusions and I accept them as accurate and supported by the totality of the evidence. The Respondents failed to do anything to address these issues. The maintenance of these attitudes limited their ability to parent D. effectively.

Position of the Parties:

[65] The Agency seeks an order for the permanent care of D. with a view to adoption. He is young and healthy and easily adoptable. The Agency takes the position that D. cannot wait for his parents to get their act together. Further, the Agency argued that maximizing the time lines was not in D.'s best interests. It did not feel that a further period of time would result in any material changes on the part of these parents.

[66] The Respondents' plan is a joint plan and represents a plea for one more chance. They requested that the present order of temporary care and custody be extended to the maximum time allowed under the **Act**. They plea that this extended period of time would allow them to partner with the Agency with a view to family reunification. They testified that the seriousness of their past only emerged as they sat in Court during the proceeding. Essentially they asked for time to turn their lives around.

Factual Conclusions:

[67] To this point I have made many individual findings of fact in this judgment. I now make the following factual conclusions which flow from the totality of the evidence:

- The Respondents demonstrated a defiant and oppositional attitude towards the Agency's involvement in their lives. Given the nature of their problems, this was the wrong tack. They failed to see the value of cooperation as the

best tool in obtaining the return of their son and the improvement of their own lives.

- They failed to recognize their need for personal and relationship counselling and they had no insight into how these failures impacted on their parenting of Demon.

- The Respondents lacked basic parenting skills and failed to recognize this deficiency. They steadfastly refused advice in this area feeling that they knew best.

- The Respondents actions to date consistently showed that they put their own interests ahead of D.'s and they failed to recognize when this is happening.

- The risk of drug abuse by the Respondents is very real. I find that they did nothing to recognize or address this significant risk.

- The evidence did not disclose any credible reasons for the Respondents failure to attend for services or to comply with Agency requests.

- The Respondents are not capable of parenting either collectively or individually.

- The Respondents pose a threat to D.'s physical and emotional well being as they have no understanding as to what is required to achieve good physical and mental health.

- There exists an animosity between the Respondents and anyone associated with the Agency. This couple have been so antagonistic and uncooperative that future Agency involvement has been compromised.

- The Respondents have no family or community support at the present time.

- The Respondents view D. in a very proprietary way. For example, J. stated in evidence that "When D. is with us, we do not feel so alone.".

- The evidence indicates that J. and J. love their son dearly. They would like nothing more than to provide him with a loving family environment. Unfortunately, without help, that dream is beyond their reach.

- The Respondents present position is not based on sudden realization. It is entirely a product of having their backs against the wall.

[68] I have considered the entirety of the evidence in arriving at the above findings of fact. I have considered the goals and objectives of the **Children and Family Services Act**. It is the decision of this Court that the Agency's application for permanent care be granted. I have applied the civil standard at arriving at this conclusion.

Temporary Care and Custody:

[69] I have denied any extension of a care and custody order. I have concluded that the Respondents are incapable of turning things around in the foreseeable future, if ever. It is certainly not possible within the time frame set forth in the **Act**. D. needs stability now.

[70] This conclusion is supported by the evidence of the assessor, Ms. Eakin. It was her feeling that any delay could result in emotional harm to D.. She stated that there would be problems when D. starts to act in an autonomous way. She stated it would be at that point in time that emotional damage would occur.

[71] Ms. Eakin was of the opinion that changes by J. and J. would need a lot of time. She stated that such changes were not in the foreseeable future even if they do what is required. I agree with this opinion.

[72] Ms. Eakin felt that it would take these parents a long time to become "emotionally mature" given that they were not yet at the starting point. In relation to J.'s "attachment issues", she felt that even with a good effort, it would take years to turn around. In conclusion she stated that "these parents are light years away from having the ability to parent". She was of the opinion that D. cannot wait and needs an "opportunity to attach now".

[73] Mr. Whitzman was of the opinion that this couple's "neediness" is tremendous. He stated that they must get over this individually and only then can

their relationship improve. He felt that now they cannot fulfill each others needs. It was his opinion that correcting these problems would take years, if it was possible. I accept Mr. Whitzman's opinion. It is certainly supported by the totality of the evidence.

[74] The statutory clock has time left to run and the Respondents rely on that for their position. Under the scheme of the **Act**, the Agency is not required to bolster parental responsibilities until the clock runs out.

[75] In the case of *Nova Scotia (Minister of Community Services) v. S.Z.* et al (1999) 179 N.S.R. (2d) 240 Justice Williams of the Supreme Court Family Division stated:

> The question of whether a matter should be adjourned and the parent given more time to address personal deficiencies or problems must be resolved by a balancing of the child's needs, best interests and protection including the need to be as a matter of first choice with the family and parents ...
>
> Should the agency seek a permanent order where there is what seems like so much time left on the statutory clock? The agency has a right, if not a duty, to do so where it believes it can satisfy the burden of proof put on it by the operation of the relevant statutory provisions ...

> The time limits set out in Section 45(1) are just that limits. They are not goals they are not waiting periods. Each case is different. Each case must be decided on its own particular facts and circumstances. (Emphasis added)

[76] In *Nova Scotia (Minister of Community Services) v. P. (L.L.)* (2003) 211 N.S.R. (2d) 47 Justice Bateman speaking for the Nova Scotia Court of Appeal approved the above passage at page 56.

[77] At page 55 she states as follows:

> Any service based measure intended to preserve or reunite the family unit, must be one which can effect acceptable change within the limited time permitted by the Act. ... ultimately parents must assume responsibility for parenting their children. The Act does not contemplate that the agency shore up the family indefinitely.

[78] And at page 56:

> The Act does not require a Court to defer a decision to order permanent care until the maximum statutory time limits have expired. The direction of section 46(6) of the statute is to the opposite effect.

[79] Section 46(6) of the **Act** states:

> Where the Court reviews an order for temporary care and custody, the Court may make a further order for temporary care and custody unless the Court is satisfied

> that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time.

Statutory Considerations:

[80] **The Children and Family Services Act** sets forth the aspirations of the legislation. While the **Act** seeks to maintain the integrity of the family unit, it also entitles children to protection from abuse and neglect. I find that the Agency has gone to great lengths to offer the support necessary to preserve this family. These efforts have generally failed because the parents have resisted rather than cooperated. State intrusion into a family is a serious matter. It is always disturbing and attracts parental resistance. That, in itself, is not surprising or to be criticized. However, there comes a point where resistance is counter-productive if not destructive. Parents who are truly committed to their children, and their family unit, must learn to work with the Agency in order to master the challenges. J. and J. have never reached this realization.

[81] J. and J.'s choices throughout this process are not borne out of ignorance of the process. They made decisions based on anger and resentment. J.'s life should have been a template for this family. This process was not an out of the blue experience. The Respondents knew that their choices attracted consequences but they acted on their own immature impulses.

[82] The balance between maintaining the family unit and protecting the child is now weighing heavily in favour of protecting D. from risk. The responsibility for this situation lies with the Respondents.

[83] The **Act** requires me to take the least intrusive action in deciding this case. The available options are set forth in Section 42(1). I conclude that while permanent care is the most intrusive, it is warranted in this case. The less intrusive options are not sufficient to protect D.. Only with permanent care will D. have the opportunity to escape the generational dysfunction that has plagued his parents and grandparents. Further, the Respondents have not shown an ability to meet the conditions attached to a less intrusive measure.

[84] I have been guided through this process by the principle that the paramount consideration is the best interests of the child. There are no other dispositions available that could achieve this objective. In coming to this conclusion, I have considered the guidance set out in Section 3(2) of the **Act**. Also, I have considered the cases of *C.(G.C.) v. New Brunswick* (Minister of Health and Community Services), [1988] 1 S.C.R. 1073, *Catholic Childrens Aid Society of Metropolitan Toronto v. C.M.,* [1994] 2 S.C.R. 165 and *King v. Low*, [1985] 1 S.C.R. 87.

[85] The protection application dated May 4, 2005 alleged D. was in need of protective services. The Applicant relied on Section 22(2)(b) (substantial risk of physical harm), Section 22(2)(g) (substantial risk of emotional harm) and Section 22(2)(ja) (substantial risk of physical harm caused by chronic and serious neglect). I conclude that all three grounds existed at the time of the trial. A permanent care order is the only way to protect D. from these substantial risks.

[86] Section 42(3) requires me to consider whether there is any possibility of placement with "a relative, neighbour or other member of the child's community or extended family". I have determined that the evidence does not disclose any

such options. J. is estranged from her mother and her father is not involved in her life. They were not involved in this hearing and were not advanced as part of J. and J.'s plan. J.'s mother lives in [...]. She has her own problems. She was not at the hearing and was not advanced as part of the Respondent's plan. The evidence does not disclose any other individual suitable or prepared to parent D..

[87] Section 42(4) requires that I not make a permanent care order unless "satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits". I have already drawn this conclusion earlier in this decision. It is supported by the opinion evidence of Suzanne Eakin and Martin Whitzman, which I accept. My observations of the Respondents during this trial satisfied me that the time remaining is insufficient for them to turn things around.

Conclusion:

[88] It is always a sad day when a permanent care order is required. This is especially so with parents so young and so scarred by their pasts. It is also difficult when parents truly love their child but just do not have the ability to parent. It would be very easy to give J. and J. another chance. However, I must be guided by D.'s best interests and not theirs. They have a great deal to accomplish in their own lives before they will be able to parent. A permanent care order with a view to adoption is the only option that can offer D. a secure and happy life.

J.