

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. J.A.B., 2009 NSSC 18

Date: 20090123

Docket: S.F.H.C.F.S.A. 054820

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

J. A. B. and S. C. M.

Respondents

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

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

Editorial Notice

Identifying information has been removed from this unofficial electronic version of the judgment.

Judge: The Honourable Justice Leslie J. Dellapinna

Heard: December 1,2,3,4, 2008 in Halifax, Nova Scotia

Written Decision: January 23, 2009

Counsel: May Knox counsel for the Minister
Charlene Moore counsel for J. B.

By the Court:

[1] This is a review application pursuant to section 46 of the *Children and Family Services Act* of Nova Scotia by which the Minister of Community Services (the Agency) seeks an order for the permanent care and custody of the child A. C. D. M. (“A.M.”) born July *, 2007, pursuant to sub-section 42 (1) (f) of the *Act*.

[2] A.M. is the daughter of the Respondents J. B. (“J.B.”) and S. C. M. (“S.C.M.”).

[3] A.M. was born from a dating relationship between J.B. and S.C.M.. J.B. was 16 years of age when A.M. was born and as of the date of the review hearing was 17. S.C.M. was 19 at the time of his daughter’s birth and is now 21. The child has never been in the primary care of S.C.M..

BACKGROUND

[4] The parties and their daughter first came to the attention of the Agency as a result of a referral by J.B.’s mother on May 22, 2007. At that time J.B. had been pregnant for approximately seven months. Her mother reported that she was concerned about her daughter’s “mental readiness” to cope with a baby and felt that she may suffer from a mental health disorder. She was also concerned about her daughter’s decision making. J.B. had recently been charged with stealing her mother’s car and driving without a license. Her mother also accused her of taking money from her without her permission and forging cheques.

[5] Upon investigation it was discovered that J.B. was living with her mother and was working with the Public Health Nurse. Due to poor attendance at school she said that she was soon going to be expelled but the school had agreed to make special arrangements with her to attend school just two days a week.

[6] After A.M. was born the Agency provided J.B. with the services of a Family Support Worker and also therapy and counselling provided by Ms. Peggy Beaton.

[7] J.B. initially responded positively to the services that were provided and the evidence shows that she and the child were bonding and that J.B. attempted to react appropriately to the needs and cues of her baby.

[8] The evidence also shows that there was ongoing conflict between J.B. and her mother. One aspect of that conflict was that J.B. did not get along with her

father. He abused J.B. when she was a young child and he continued to abuse alcohol. J.B.'s ability to reside with her mother was based on the understanding between her and her mother that her father would not be living in the house at the same time. Not only was there conflict between J.B. and her mother over that issue but J.B. felt guilty for keeping her mother separate from her father. When A.M. was approximately one month old J.B. moved from her mother's residence to the home of a friend.

[9] As the weeks passed additional concerns were reported. Some were disclosed by anonymous referrals and others were noted by the service providers. Those concerns included J.B. failing to adequately clean and disinfect the baby's bottles, mixing Pablum with the child's formula when she was only one month old contrary to her doctor's advice, putting the child down to sleep on her stomach as opposed to her back, having the child sleep in the same bed as her mother, leaving the child to cry for prolonged periods of time, leaving the child with unreliable caregivers, leaving the child on a bench in a camper in which S.C.M. resided without adequate guardrails around her, failing to administer prescribed medications to the child to treat a diagnosed infection, failing to change the child's diaper in a timely fashion, failing to dress the child appropriately and failing to seek medical advice when the child was ill. Many of these concerns were denied by J.B. and some were admitted.

[10] As these concerns mounted the Agency took A.M. into care on September 12, 2007. The Protection Application and Notice of Hearing alleging that A.M. was a child in need of protective services pursuant to sub-section 22 (2) of the *Act* was filed on September 18, 2007. The interim hearing was completed on October 5, 2007 with the consent of the parties. Among other things it was ordered that the child remain in the care and custody of the Agency. The protection finding was made on December 12, 2007, also with the consent of the Respondents, and the first disposition order which gave temporary care and custody of A.M. to the Agency was granted on March 3, 2008, also with the consent of J.B.. The Respondent S.C.M. did not attend Court on that day.

[11] Following the first disposition order review hearings were held on May 14, 2008, August 6, 2008 and October 31, 2008. On each of those occasions the Temporary Care Order was renewed with the consent of J.B.. S.C.M. did not take part in any of those proceedings and although he received notice of the current application he chose not to present a plan or take any role in the hearing.

THE AGENCY'S POSITION

[12] The Agency seeks an order placing A.M. in the permanent care and custody of the Agency. On behalf of the Agency it was argued that while various services were provided to J.B. with the hope and intention of reuniting the child with her mother, she did not adequately follow through with those services and consequently it is the Minister's position that it is in the child's best interests that she be placed in permanent care. In the Agency's Plan for the Child's Care dated July 23, 2008 the following is stated:

“Significant concerns continue to exist with respect to the Respondents’, [J.B.’s] and [S.C.M.’s] ability to adequately meet the needs and protect the child, [A.M.]. The Respondent, [J.B.], has continued to demonstrate personal instability including the lack of stable residence, financial stability, and lack of ability to engage or fully cooperate in services to alleviate the risk of harm to the child....

As such, the Agency is seeking an order placing [A.M.] in the Permanent Care and Custody of the Minister of Community Services with no access to the Respondents, [J.B.] and [S.C.M.].

And further:

“The Respondent, [J.B.] has been unable to stabilize her personal circumstances. [J.B.] has presented several plans to the Agency which she has not been able to follow through with. [J.B.] has not followed through with all reasonable direction and recommendations of the professionals involved. [J.B.] has been unwilling to acknowledge the major presenting problems.”

“It is the position of the Applicant that the Respondents, [J.B.] and [S.C.M.], have not adequately addressed the issues which placed their child in need of protective services. Given the needs of the child for consistency, safety, and security and the demonstrated lack of progress achieved to date by the Respondents, it is the position of the Agency that the circumstances justifying the proposal are unlikely to change within a reasonably foreseeable time and that it is in the best interest of the child that an adoptive home be secured as soon as possible.”

THE RESPONDENT'S POSITION AND PLAN

[13] J.B. seeks the return of her child. She is currently residing with her boyfriend (“C.C.”) in the home of his parents in K., Nova Scotia. She has employment at a * restaurant where she works shifts on a full-time basis. Her various shifts could end at 7:00 p.m., 8:00 p.m. or 10:00 p.m.. Every other weekend she works Friday evening from 7:30 p.m. to 3:30 a.m.

[14] Her boyfriend was working but that employment has come to an end, at least for the winter.

[15] In her affidavit J.B. says that it is her plan, if A.M. is returned to her care, to continue living with C.C. and his family. She intends to continue working at * and C.C. would provide childcare while she is at work. She and C.C. expect to live with C.C.’s family “for at least a year; probably longer”, before moving into their own place. Should her relationship with C.C. come to an end, she says that it is her intention to continue living in the K area with the expectation that C.C.’s parents “will do their best” to support her. She also plans to enrol her daughter in a daycare once she is three years of age so that she can socialize with other children and ready herself for school.

LEGISLATION

[16] The relevant sections of the Children and Family Services Act are as follows:

2 (1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.

(2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.

...

3(2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

(a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;

(b) the child's relationships with relatives;

- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (d) the bonding that exists between the child and the child's parent or guardian;
- (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;
- (h) the religious faith, if any, in which the child is being raised;
- (i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- (j) the child's views and wishes, if they can be reasonably ascertained;
- (k) the effect on the child of delay in the disposition of the case;
- (l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;
- (m) the degree of risk, if any, that justified the finding that the child is in need of protective services;
- (n) any other relevant circumstances.

...

42 (1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

- (a) dismiss the matter;
- (b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
- (c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other

person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;

(e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;

(f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

(a) have been attempted and have failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child.

(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

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

...

46 (1) A party may at any time apply for review of a supervision order or an order for temporary care and custody, but in any event the agency shall apply to the court for review prior to the expiry of the order or where the child is taken into care while under a supervision order.

...

(4) Before making an order pursuant to subsection (5), the court shall consider

- (a) whether the circumstances have changed since the previous disposition order was made;
- (b) whether the plan for the child's care that the court applied in its decision is being carried out;
- (c) what is the least intrusive alternative that is in the child's best interests; and
- (d) whether the requirements of subsection (6) have been met.

(5) On the hearing of an application for review, the court may, in the child's best interests,

- (a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order;
- (b) order that the disposition order terminate on a specified future date; or
- (c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 43 for supervision orders and in Section 45 for orders for temporary care and custody.

(6) 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 period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

47 (1) Where the court makes an order for permanent care and custody pursuant to clause (f) of subsection (1) of Section 42, the agency is the legal guardian of the child and as such has all the rights, powers and responsibilities of a parent or guardian for the child's care and custody.

(2) Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that

- (a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for such placement;
- (b) the child is at least twelve years of age and wishes to maintain contact with that person;
- (c) the child has been or will be placed with a person who does not wish to adopt the child; or
- (d) some other special circumstance justifies making an order for access.

THE EVIDENCE

[16] The evidence tendered by the Agency consisted of more than ten volumes of materials. Those volumes included but were not restricted to various affidavits from the social workers employed by the Agency, affidavits from three Family Support Workers who offered family skills training to J.B. between August 2007 and July 2008, affidavits from two Public Health Nurses who worked with J.B., an affidavit from the Guidance Counsellor from * where J.B. attended grade 9 classes before dropping out, the clinical chart notes of two physicians who attended to J.B. and A.M., a Parental Capacity Assessment Report prepared by Dr. Sandie J. Sparkes of the I.W.K. Health Centre dated January 14, 2008, a psychological assessment report prepared by Dr. Lowell Blood (which formed part of the Parental Capacity Assessment Report), three reports prepared by Ms. Peggy Beaton, a Clinical Social Worker who provided therapeutic services to J.B., notes of the access facilitators and the Agency's recordings.

[17] The evidence tendered on behalf of J.B. included J.B.'s own affidavit as well as affidavits from her boyfriend, his father ("K.C.") and his mother ("T.C.").

[18] In addition to the documents entered into evidence a number of witnesses provided verbal testimony.

[19] From the evidence I've made a number of observations and drawn certain conclusions.

[20] J.B. is the oldest of three children in her family. Her parents were themselves the subject of a number of child welfare investigations going back to when J.B. was a young child. According to the assessment report prepared by Dr. Sparkes J.B. reported that her father had a long history of "smoking dope" and abusing alcohol. She also reported that her parents frequently "yelled, screamed, and fought with each other".

[21] J.B. also reported that her father mentally, physically, sexually and emotionally abused her, and consequently she did not like or get along with him. Until she was ten years of age she shared a positive relationship with her mother. Since that time her relationship with her mother has been inconsistent and they frequently argue.

[22] Since A.M. was taken into care J.B. tried living with her mother but that wasn't a workable arrangement. When asked if another family member might offer a placement for her daughter J.B. said that she would not support a placement with any member of her family.

[23] J.B. was not a successful student. She advanced through elementary school but struggled when she reached junior high. She repeated grade 9 before eventually dropping out. The evidence disclosed that while in grade 9 she frequently failed to attend classes and when she did she was often late and often left classes without permission. There were also problems with her behaviour while at school which resulted in her having fights with other students which in turn led to suspensions. She said that she intends to return to school to pursue her G.E.D. but so far has not followed through on those plans.

[24] J.B. appears to have no family support and finding a stable residence has been difficult for her. Since leaving the home of her mother last summer she moved at least four times living with friends before eventually taking up residence with her boyfriend in K.

[25] J.B. met C.C. through the internet in February 2008 and met him face-to-face for the first time in March.

[26] C.C. is 20 years old. He has completed grade 11. While in grade 12 he made the decision to leave school and go to work. He is not presently gainfully employed. He and his two younger siblings (a brother age 19 and a sister age 16) live with their parents. He introduced J.B. to his parents in June 2008. During J.B.'s second meeting with his family (also in June) C.C. asked his parents if she could move in with them. With C.C.'s parent's permission, J.B. moved in that month.

[27] C.C. describes J.B. as his "first serious relationship".

[28] In C.C.'s affidavit he said that he hopes that one day he and J.B. will be able to move into their own place with A.M. but they won't do that until he is financially secure. He stated: "Whenever we do move out, we will remain in the community close to my family who would always be there to help us out." He also said:

“My family and I support [J.B.] and would welcome [A.M.] into our home. I care about [J.B.] very much and I hope that our relationship will last. Even if it does not, my family would continue to support [J.B.] and [A.M.] financially and emotionally.”

[29] C.C. admitted that when J.B. moved in with him and his family he did not know the full extent of her involvement with the Agency and had not seen a copy of the Parental Capacity Assessment Report. He was aware, however, that after she moved into his home in June of 2008 she did not attend any of the regularly scheduled access visits with her daughter between June 19 and July 15, 2008. He also made no effort to take her to attend any of her Court ordered therapy sessions.

[30] C.C.’s father and mother have been married for 19 years. In his affidavit K.C. says that he and his wife have offered J.B. their home and she has become part of their family. According to their affidavits neither K.C. nor T.C. have offered to provide financial support for J.B. in the event that she and C.C. break up but K.C. did say that even if J.B. moved out of their home he and his wife would “continue to offer her emotional support .” He also said: “we would be there to help out with [A.M.] and we would be prepared to assume custody of [A.M.] as a restricted foster placement to enable [J.B.] to have one on one parenting with [A.M.] in her home until she was ready to assume care of [A.M.] herself.” In her affidavit, T.C. said the same thing.

[31] K.C. is 46 years of age. He was employed as a * but in 2007 he injured his back and is not able to work. According to his wife he’s not able to lift anything weighing more than five pounds.

[32] T.C. is 42 years of age and works eight hour shifts at a * Restaurant near her home. In her affidavit she said, “My husband is home full time and we are both committed to assisting [J.B.] in obtaining custody of her daughter and are prepared, on a temporary basis, to assume custody of [A.M.], with [J.B.] in our home, until she is able to assume full time care of [A.M.] herself if the court so ordered.”

[33] Neither K.C. nor T.C. tried to contact the Agency once they became acquainted with J.B.. Their first contact with the Agency was in September 2008 when Ms. Dutch, a social worker employed by the Agency, contacted them. During cross-examination, when asked why she didn’t contact the Agency and tell the

Agency of their plan, T.C. said she didn't know why she didn't and acknowledged she probably should have.

[34] T.C. was not aware that J.B. was skipping her regularly scheduled access visits after moving into her home and J.B. made no mention to T.C. of her therapy appointments. In her affidavit, J.B. said:

“I admit I missed visits in June and August as I did not have funds for transportation for visits with [A.M.] as I did not have any money in June and I had not yet received my pay check for the August visits.”

[35] I do not accept that the lack of funds was the reason for J.B.'s failure to see her daughter between mid-June and mid-July. If funding was a reason she failed to advise the Agency. She also stopped meeting with and speaking to her Family Support Worker in June and most of the month of July.

[36] After A.M. was taken into care, J.B. showed some progress in the months of October and November, 2007. Although she refused to work with Ms. Julia Brown, a Public Health Nurse employed by Healthy Beginnings, because she blamed Ms. Brown for the Agency's involvement, she seemed receptive to the instructions offered by the Family Support Worker that was then assigned to her and to the therapy offered by Ms. Peggy Beaton.

[37] In her report dated November 19, 2007 Ms. Beaton reported, after meeting with J.B. on August 29, October 29 and November 8, as follows:

“[J.B.] was referred for therapy to assist her in adjusting to the birth of her baby, and in making decisions around establishing a stable environment for herself and [A.M.]. It was felt that she also had unresolved issues relating to her relationship with her parents which needed to be addressed.

[J.B.] initially maintained that she was coping well and did not need therapy. Once she resumed contact after [A.M.'s] apprehension, she became more open and appeared to recognize that she could benefit from regular therapeutic input.

[J.B.] appears to be a strong-minded and strong-willed young woman. She has been able to take a stand with [the child's father] in the past regarding a number of issues and has not backed down. She is determined not to go on Income Assistance but rather to support herself and [A.M.].

[J.B.] appears to be looking at her present situation in a realistic light, and is willing to look at her options.

I believe that [J.B.] is ready to work on the issues she is facing and would benefit from continuing regular therapy.”

[38] Beginning in November, 2007, however, J.B.’s progress began to falter. She cancelled appointments with Ms. Beaton scheduled for November 15, and 29 and December 17 and 19, 2007. She met with Ms. Beaton on November 22 but was fifty-five minutes late for an appointment scheduled for December 12. Ms. Beaton said in her January 14, 2008 report that she had ongoing difficulties arranging appointments with J.B. She also said:

“ It became clear during a conversation with the clinician conducting the Parental Capacity Assessment that [J.B.] had been untruthful with both of us regarding setting up appointments. She had double booked with each of us, using each appointment as a reason to miss the other.”

[39] Also in her January 14, 2008 report Ms. Beaton said that J.B. told her that she was no longer seeing the child’s biological father but had reconnected with a previous boyfriend who spent time in a youth correction facility and who was attending Drug Dependency. Ms. Beaton reported that J.B. said that her decision to reconnect with her old boyfriend only indicated that she preferred to be in a loving and supportive relationship. During her testimony J.B. denied dating this person and said he was just a friend.

[40] In the summary of her January 14 report Ms. Beaton said:

“[J.B.] does not appear to understand or accept the Agency’s concerns. She seemingly does not appreciate that she must fully participate in programs and services, rather than not attending, making excuses and blaming others. [J.B.] disagrees that she is not cooperating.

[J.B.] appears to be merely going through the motions of being involved in therapy. She does not call to reschedule cancelled appointments, and does not bring her schedule to the appointments she does attend to set up further sessions. She arrived 55 minutes late for one appointment, and was surprised I was not in

the office when she arrived for another appointment she had cancelled earlier in the day.

[J.B.] at times shows some insight into her difficult relationship with her mother. However, she fails to connect this insight to the changes she must make in order to be a responsible parent herself.

If the plan is for [A.M.] to be returned to [J.B.'s] care, I would recommend that therapy be continued, and that she be expected to attend on a regular basis. Additionally, [J.B.] must fully cooperate with the expectations and services the Agency is requesting of her.”

[41] Ms. Beaton met with J.B. again on February 21, March 6, March 20 and March 27, 2008. J.B. cancelled appointments that were scheduled for January 17 and February 13. Ms. Beaton said that J.B. did not return her phone calls to arrange for new appointments for the month of April.

[42] In her report dated April 15, 2008 Ms. Beaton wrote:

“[J.B.] appeared to develop some insight into her troubled relationships with young men. She said she realized she needed a break from relationships in order to concentrate on her issues.

However, it is my understanding that she is again in a relationship which involves her being out-of-town on the weekends, and at times missing visits with [A.M.] on Mondays.”

[43] It was during this time frame that J.B. began her relationship with C.C..

[44] Under the hearing “Summary and Recommendations” Ms. Beaton said:

“The purpose of therapy was to help [J.B.] develop better coping strategies to deal with the stress of being a new mother, and help her provide a healthy home environment for [A.M.]. Although it appeared that [J.B.] made some beginning changes and appeared to be developing some insight during the month of March, she is continuing to lie, and is not following through on her commitments in relation to therapy. [J.B.] continues to show immature behaviour and a lack of responsibility, which will make it difficult for her to parent [A.M.]. In order for [J.B.] to benefit from therapy, she will have to attend weekly sessions, acknowledge her role in the difficult situations she finds herself in, and be able to work cooperatively with the Agency.

I would be willing to continue working with [J.B.], if she accepts responsibility to attend on a regular basis.”

[45] It is my understanding J.B. did not attend any further sessions with Ms. Beaton after March 27.

[46] Dr. Sandie Sparkes was recognized by the Court as an expert in clinical psychology. In her Parental Capacity Assessment report dated January 14, 2008 under the heading “Current Parenting Ability” she wrote:

“A child’s most basic needs for survival are for food, clothing, shelter, and physical safety. This assessment revealed an abundance of evidence that [J.B.] is not able to consistently meet these needs for [A.M.]. The primary factors that limit [J.B.’s] ability to meet [A.M.’s] basic needs include the instability in [J.B.’s] living circumstances, her impulsivity, her limited knowledge of child development, her defensive interpersonal style, and her immaturity.”

[47] Dr. Sparkes then referred to J.B.’s unstable residential arrangements in the years preceding the Court hearing. During her verbal testimony when asked to comment on J.B.’s current arrangements with C.C. and his family she said the fact that she had been living in the same place and in the same relationship for approximately seven months showed that there was some potential that she might change but that in her opinion seven months was insufficient time to make that determination.

[48] Dr. Sparkes also said in her report that J.B. is an impulsive person by nature, self-absorbed and strong-willed with “little to no tolerance for situations that are out of her control and/or do not work out in her favour.”

[49] At page 23 of her report she said:

[J.B.] has demonstrated impulsivity in her decision-making about the future. She has proposed several plans to the Agency (as well as the assessor) in a remarkably short timeframe regarding where she will live, how she will make money, and the means by which she will pursue her education. In effect, [J.B.] has not demonstrated the ability to establish a viable plan for her future, commit to it in the long-term, and follow it through to fruition. She appears to lack the motivation and means required for the same. Such behaviour significantly threatens [J.B.’s]

ability to consistently meet [A.M.'s] basic needs for food, clothing and shelter on a long-term basis.”

[50] Regarding J.B.'s knowledge of child development:

“Although some collateral information suggests that [J.B.] accepted and implemented parenting advice from some individuals over the past number of months, the vast majority of collateral information indicates that [J.B.] was defensive about her parenting behaviour, not amenable to changing it, and did not change it when advised to do so. Thus, [J.B.'s] ability to meet [A.M.'s] basic and safety needs on a consistent and long-term basis are threatened by her limited knowledge of child development combined with the finding that she is often not receptive of, or responsive to, parenting-related feedback from other individuals.”

[51] In J.B.'s affidavit she commented on her lack of cooperation with the Family Support Workers. She said in paragraph 46 of her affidavit that she enjoyed working with the first Family Support Worker that was assigned to her, trusted her and felt comfortable with her. However she says she “did not connect with the other Family Support Workers” and she “found the information provided by them less useful.” Regarding her counselling sessions with Ms. Beaton she said, beginning at paragraph 15 of her affidavit, “I did not really connect with Peggy Beaton. I was never really comfortable talking to her. I did not have a connection to her and her age might have played a role as it was kind of like talking to my grandmother.”

[52] Dr. Sparkes concluded her report as follows:

“After [A.M.] was taken into the Temporary Care and Custody of the Agency at seven weeks old, [J.B.] continued to demonstrate disregard for Agency-specified conditions related to her parenting of [A.M.]. She either denied or minimized each of several allegations that multiple members of her community and multiple professions made about her parenting. She demonstrated minimal involvement with therapy services that were put in place for her by the Agency. She also demonstrated limited knowledge about child development and a tremendous lack of insight into the seriousness of the Agency's many concerns about her parenting.

Despite the poor decisions and actions that [J.B.] has made in her role as [A.M.'s] parent, it is very clear that [J.B.] loves and wants to parent [A.B.]. [J.B.] has the capacity on some occasions and in some contexts to demonstrate positive parenting practices such as physical affection, cognitive stimulation, and daily routine in [A.M.'s] feeding and sleeping schedule. She very much wants to establish a stable living environment for [A.M.]. Nonetheless, [J.B.] has not been

able to establish stability in her own life over the past several years. In that timeframe, [J.B.] has made a significant number of changes in her residence. She has maintained an alternately positive/negative relationship with her mother and has not adequately treated her ADHD on a long-term basis (despite being offered the professional support to do so). Furthermore, she has not been able to secure a source of income to support herself or [A.M.]. Notably, [J.B.'s] mother offered - both before and after [A.M.'s] apprehension by the Agency - to house and otherwise support [J.B.] and [A.M.]. [J.B.] has demonstrated great difficulty in making that plan work. She made it work (although, not optimally) for less than a month after [A.M.'s] birth. Since then, however, she has reported an unwillingness to pursue that plan due to her intolerance for her mother's daily structure and rule-setting.

Based on all of the information revealed by this assessment, it is clear that [J.B.] does not have the capacity to adequately parent [A.M.]. Notably, [J.B.] has demonstrated the ability to accept and use advice from some (but not all) professionals that she has worked with in her role as [A.M.'s] parent. However, [J.B.] potential for successfully working with professionals to enhance her parenting capacity on a consistent and long-term basis is significantly limited by her immaturity, her impulsivity, and her defensive interpersonal style. It is unlikely that any amount or combination of professional supports and services could be put in place such that [J.B.] could successfully parent [A.M.] on any basis. Indeed, [J.B.'s] attitude towards the Agency and her failure to accept any responsibility for the threats that she has historically posed to [A.M.] physical and emotional wellbeing do not bode well for [A.B.'s] future in the event that [A.M.] was placed in [J.B.'s] care and custody. (Emphasis added)

[53] Dr. Sparkes recommended that A.M. be placed in the Permanent Care and Custody of the Agency and that eventually an adoption placement be found for her.

[54] Dr. Lowell Blood, an expert in psychology specializing in psychological assessments saw J.B. for psychological testing in the context of completing the Parental Capacity Assessment. In his report he concluded as follows:

“In interview and testing, [J.B.'s] responses were remarkable in that she tended to over-endorse mental health symptomatology. However, even given this response style, it appears that [J.B.] struggles with issues of anxiety, depression and impulse control. She appears to have difficulties in interpersonal relationships and the availability of appropriate emotional support is of concern. [J.B.'s] struggles with emotional and interpersonal issues and her apparent lack of support raise concerns regarding her ability to parent. Her scores on a measure of risk for

physical child abuse were quite high. While there is not evidence to suggest that she has been abusive toward her child, this elevated score reflects the many difficulties [J.B.] continues to experience and underscores the negative impact of her situation on her ability to adequately parent a young child.”

[55] Not all of the evidence presented by the Minister was negative. Joanne Kelly, the first Family Support Worker assigned to J.B. reported that J.B. cooperated with her and Ms. Kelly had no concerns regarding J.B.’s physical care of A.M. during access. Many of the Agency’s social workers and the other Family Support Workers reported that J.B. showed affection for A.M. and attention to her care during access sessions. Nevertheless, many expressed concern over J.B.’s apparent unwillingness to accept direction and an access facilitator expressed concern over J.B.’s ability to absorb and retain information.

CONCLUSIONS

[56] The onus is on the Agency to satisfy the Court that its plan (for Permanent Care and Custody) is in the child’s best interest and that less intrusive alternatives have been attempted and have failed, have been refused by the Respondent or would be inadequate to protect the child. Given that permanent care is the most intrusive remedy under the *Act* the onus is a heavy one.

[57] After considering all of the evidence and the relevant sections of the *Children and Family Services Act* including sections 2, 3(2) and 42 I am satisfied that the interests of A.M. are best served by ordering that she be placed in the permanent care and custody of the Agency.

[58] There is no suggestion that J.B. has ever intentionally caused her child any harm and due perhaps in part to the Agency’s earlier involvement, no actual harm has been caused to A.M.. However, the Agency need not and should not wait for actual harm to occur before acting. In this case it is J.B.’s lack of capacity to adequately provide physical and emotional care for A.M. over an extended period of time that would place A.M. at substantial risk of harm should this application be dismissed.

[59] The Court does not question J.B.’s affection for her daughter or her desire to have her back in her care. The outcome of this case may have been different if J.B.

was more open to learning new child care skills and more receptive to advice but it is her unwillingness or inability to accept such directions and make the necessary changes that causes A.M. to be in need of protection. As much as the Court may empathize with J.B., the Court's focus must be on the child's needs. The best interests of A.M. is the paramount consideration.

[60] After A.M. was initially taken into care and this matter first came before the Court the Agency satisfied me that due to J.B.'s lack of stable residence, immaturity, problems with interpersonal relationships, poor decision making and lack of basic parenting skills and knowledge she had been placing A.M. at substantial risk of harm. I concluded, and J.B. agreed, that A.M. should remain in the temporary care and custody of the Minister.

[61] J.B. claimed that she wanted to have a chance to parent A.M. and took part in services. Initially she cooperated with those services.

[62] She has known for many months what the Agency expected of her and what she was expected to do in order to secure the return of her daughter. That included obtaining and maintaining an appropriate and stable residence, consistently attending all scheduled access visits with her daughter, making herself available for services with the Family Support Worker, engaging in individual counselling with Ms. Beaton, following-up with her family doctor with respect to her own health and attending all scheduled appointments with her caseworker. Beginning in November of 2007 her cooperation has been at the very least inconsistent. Even though she knew that losing care of her daughter permanently was a possible outcome in these proceedings she was unable or unwilling to dedicate herself to the process.

[63] She missed appointments with the Family Support Workers and Ms. Beaton and missed access with her daughter. She made up excuses and at times even lied. After meeting C.C. in 2008 her cooperation with the service providers waned even further and between July 19 and July 15, 2008 she made no attempt to see her daughter at all.

[64] As a consequence of J.B.'s lack of commitment no real progress has been made.

[65] J.B.'s unwillingness to follow through with the services that were offered and perhaps learn from professionals with more knowledge than her was predicted by Dr. Sparkes. J.B. believes, it seems, that her way is the best way.

[66] Although still young her history shows a lack of commitment in many areas including family relationships, interpersonal relationships with non-family members, residential arrangements, school and work.

[67] Being 17 years of age is not by itself a reason to be denied the care of her child, but J.B. does not understand all that parenting a young child entails. She does not accept the protection issues raised by the Agency and does not appreciate that she needs assistance in learning how to care for her daughter. She cannot be counted on to provide the stability, the ongoing care and the protection her daughter will require on a day in and day out basis for years to come.

[68] J.B.'s plan is to live with C.C. and his family - people she didn't even know when her daughter was taken into care. She views her current living arrangement as a cure for all the protection issues.

[69] C.C., although 20 years of age and older than J.B., is himself immature and unworldly. By his own admission his relationship with J.B. is his very first serious relationship.

[70] C.C.'s parents have offered J.B. their home and their support. Unfortunately J.B. has not been open and honest with them. They did not know all of her circumstances or the full nature of the Agency's involvement with her until the Agency's social worker met with them in September 2008 to review the Parental Capacity Assessment Report.

[71] The Court cannot assume that J.B.'s relationship with C.C. or her living arrangement with C.C.'s family will be long lasting, particularly given J.B.'s history of difficulty in maintaining personal relationships. The C's have known J.B. for less than a year. Should J.B.'s relationship with C.C. come to an end it would be unrealistic to expect the C's to financially support her outside of their home and she would need much more than just their emotional support. In any event the issue before the Court is not whether K.C. and T.C. or C.C. are appropriate care providers. Rather, the issue is whether it is in A.M.'s best interests to be returned to the care of her mother and therefore dismiss the

application of the Minister or to be placed in the permanent care and custody of the Minister.

[72] Returning A.M. to the care of J.B. is not a viable option. While J.B.'s residential arrangements have shown more stability over the past seven months than was previously the case one cannot predict if those arrangements will last any length of time. She doesn't truly understand the protection concerns that resulted in A.M. being placed in temporary care. She continues to lack the capacity to parent A.M. and there is no indication that she has any desire to change. Permanent care and custody is therefore granted to the Agency. I am satisfied that the circumstances that lead me to this decision are unlikely to change within a reasonably foreseeable time and certainly not before the maximum time limits allowed for under the *Act* expire.

[73] There will be no provision in the Court's order for access.

J.