SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. A.C.*, 2016 NSSC 132

Date: 2016-05-19
Docket: *SFSNCFSA* No. 90752
Registry: Sydney

Between:

The Minister of Community Services

Applicant

v.

A.C., R.R. and L.O.

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:	November 24, 25, 26, 27, and 30, 2015; December 1 and 22, 2015; January 11, 12, 13, and 14, 2016 and oral summations heard February 24, 2016 in Sydney, Nova Scotia
Written Summations:	February 8, 2016 by Adam Neal; and February 17, 2016 by Coline Morrow (brief with case law)
Written Release:	May 19, 2016
Counsel:	Adam Neal for the Applicant Coline Morrow for the Respondent, A.C. Vincent Gillis, Q.C. for the Respondent, R.R. L.O., not represented; not present

By the Court:

INTRODUCTION:

[1] Parenting involves more than love and good intentions. At its very basic level, children need food, shelter, love and a safe environment. Not all parents are able to meet these needs, sometimes for reasons outside their control. Unfortunately, this is one of those cases.

BACKGROUND:

[2] A.C. is the mother of three children: W.C. born April *, 2005, T.C. born March *, 2007 and H.C. born June *, 2008. L.O. is the biological father of the two older children; R.R. is the father of the youngest child.

[3] A.C. was placed in the care of Children's Aid as a child, and she grew up in the child welfare system. After she became a mother, the Minister (formerly the Agency) received and investigated referral information on a number of occasions, leading to several court applications. The history of the Minister's involvement is as follows:

1. In 2005 after W.C. was born, referral concerns included inadequate food and supplies for the infant, as well as poor partner choices.
2. In early 2006, the Minister received information about a physical altercation between A.C. and a neighbour, with W.C. present. Services were implemented.
3. In August, 2006 A.C. reported that her brother locked her and the child W.C. in the basement of her home and then kidnapped the child. Instead of calling police, she called R.R., who got into a physical altercation with her brother. The Minister sought a Supervision Order and put remedial services in place for her and the child, who was then displaying behavioural problems.
4. In January, 2007 W.C. was taken into care. At that time, A.C. was pregnant with T.C. He was taken into care at birth. Remedial services for A.C. and the children continued. R.R. agreed to take services as well.
5. Access was expanded in the fall of 2007; the children were gradually reintegrated into the home in the spring of 2008. W.C. went home

first. T.C. was transitioned into A.C.'s care later, to avoid overwhelming A.C. Both were home by August, 2008.

6. The Agency asked the court to discontinue the protection proceedings. By that time, H.C. had been born, so there were three children in the home. A.C. agreed to continue family support services through the Minister on a voluntary basis after the court proceedings ended in 2008.

7. In 2009, the Minister received several referrals relating concerns of inappropriate parenting and discipline, as well as incidents of domestic violence between A.C. and R.R. The Minister reopened its file to offer voluntary services, which were accepted by A.C. and R.R.

THE CURRENT PROCEEDING:

[4] This proceeding arises from a referral received from R.R. on April 8, 2014. He expressed concerns for the safety of the children in A.C.'s care. He audio-recorded an incident where A.C. lost her temper with W.C., yelling and swearing at her, calling her a bitch and threatening to beat her. In addition, he reported constant chaos in the home with the children's behaviours. He expressed high anxiety in dealing with the situation, and told workers that he had his own residence; the only reason he spent time at A.C.'s home was to see the children.

[5] The file was opened for investigation, and a decision was made to place the children in R.R.'s care under the Minister's supervision. A.C. was to have supervised access. However, the day after this decision was made, R.R. advised workers he could not care for the children, as he was too stressed. A.C. had been hounding him through the night for information about the children, and he could not handle her demands.

[6] Although the following day R.R. changed his mind and asked to keep the children, the Minister had taken the children into care and placed them in foster homes in the meantime. Given R.R.'s state of mind, the decision was made not to return the children to his care. The foster placement was considered the safer and least disruptive option for the children.

[7] The children have remained in the care of the Minister since April 11, 2014. A.C. and R.R. have supervised access. The decision was made in July, 2015 to seek permanent care of the children, based on historic concerns with A.C.'s parenting, and lack of progress with remedial services for both A.C. and R.R.

ISSUES:

1. Are the children still in need of protective services?

2. If so, should an order for permanent care and custody be granted ?

(a) Have the least intrusive measures, including services, been attempted and failed ? Or would they be inadequate to protect the children?

(b) Are there any family members available to care for the children?

(c) Are circumstances likely to change in a reasonably foreseeable time?

3. If permanent care is ordered, should access be awarded?

LEGISLATION:

[8] The children were found in need of protective services on July 11, 2014 pursuant to s. 22(2)(b) and (g) of the ***Children and Family Services Act*** SN.S. 1990, c. 5 **(*CFSA*)** which states:

> 22 (2) A child is in need of protective services where
>
> …
>
> (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);
>
> …
>
> (g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

[9] In any decision involving children, and in particular a review under the ***CFSA***, the court must give priority to the children's best interests. This is in accordance with s. 2(2) and 42(1) of the ***CFSA***. The circumstances relevant to a consideration of a child's best interests are set out in s. 3(2) which states:

> 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.

[10] The ***CFSA*** requires that, before the court grants an order removing a child from the care of a parent, the circumstances enumerated in s. 42(2) – (4) must be met. Those sections state:

> 42(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. *1990, c. 5, s. 42.*

[11] In addition, the court must have regard to the legislative time limits set out in the ***CFSA.*** The legislative deadline for final disposition of this case was October 1, 2015. Although the Minister filed its plan for permanent care of the children on July 22, 2015, trial dates could not be set within the legislative timeline due to the schedules of counsel and the court. A lengthy trial was completed on February 24, 2016. All parties agreed that extension of the timelines to allow a full hearing on the merits was in the best interests of the children.

[12] Also relevant to this decision is s. 47(2) which states as follows:

> 47(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 ONUS:

[13] The onus is on the Minister to prove its case on a balance of probabilities, based on clear, convincing and cogent evidence (**F.H. v. McDougall, 2008 S.C.C. No. 53**).

THE CHILDREN:

[14] There are three children who are the subject of this proceeding:

- W.C. is the oldest at 11 years of age. She was displaying behavioural difficulties while in her mother's care, and was A.C.'s main target in the tirade recorded by R.R. She is described as bright, engaging, a good singer and a natural athlete; however, at the same time she is described as manipulative, demanding, saucy and aggressive.
- T.C. is the middle child, now 9 years old. He was described as cheerful and bright, though he can also be aggressive, loud, and a bully to his younger sister.
- The youngest child H.C. was described as happy and loving, but also loud, hyper and impulsive. She and T.C. frequently fight, and she is known to throw tantrums. H.C. is almost 8 years old.

[15] All three children were on medication to manage their behaviours when taken into care. The two older children have been weaned off those medications, but H.C. still takes medication for A.D.H.D. symptoms. All three children are followed by pediatrician Dr. Sasani, who reports improvement in their behaviours and sleep patterns since April, 2014.

[16] The evidence indicates at this time, the children are doing well in school and they are involved in extra-curricular activities. They appear to have coped relatively well with all of the changes in their young lives, including several foster home placements since April, 2014.

EXPERT EVIDENCE:

[17] Dr. Reginald Landry, a psychologist who prepared a psychological assessment of parental capacity (P.C.A.) in relation to A.C. and R.R., testified.

[18] He prepared a report dated May 6, 2015 in which he expressed the opinion that A.C. and R.R. demonstrate the ability to parent their children. However, he noted several challenges facing these parents, including:

1. The children's needs - they have been diagnosed with behavioural and learning disorders and are very active. The parties encountered difficulties managing the children's behaviours in the past.
2. The quality of the couple's relationship - behavioural problems can be stressful, so support from a spouse is important. These parents have not been consistent in their approach to parenting. In addition, A.C. also has a long history of mental health issues, including some deeply rooted psychological issues which impact her relationship with R.R.
3. A.C. and R.R. have cognitive limitations - A.C.'s intellectual abilities are significantly below average; this impacts the quality of their communications and their ability to cope with stress.

[19] Despite offering an opinion that A.C. and R.R. have the ability to parent, Dr. Landry concluded they have not fully overcome the challenges identified in his report. He offered eight recommendations to address the challenges they face. A.C. and R.R. say they have addressed some of these recommendations, and are open to accessing services to address the others.

[20] Dr. Landry confirmed that his conclusion and recommendations were based on the information available to him at the time the report was completed in May, 2015. He also confirmed that much of his information was based on self-reporting from A.C. and R.R.

[21] The Minister explored several areas of concern with Dr. Landry, including:

- Illegal drug use: Dr. Landry agreed that ongoing and recent use of illegal drugs would present concerns not identified in his report. He would be concerned if drugs are being used as a coping method. He also expressed concern with the potential impact of marijuana on the medications prescribed for the parties.
- Ongoing behavioural issues: Dr. Landry agreed that if the children ordinarily act out during access, and if parents cannot manage them during a two hour visit, the chances of managing the children's behaviours on a daily basis are not good.

- Lack of improvement: Dr. Landry agreed that 18 months is a significant period of time to practice and improve parenting skills. He also agreed that if there has been little or no improvement after 18 months, concerns would arise about the ability to parent in future.

- Stress reduction: Dr. Landry agreed that if the children's behaviours cause the parents stress, this may exacerbate the challenges of parenting. In his report, he identified stress management as a key issue with this couple.

[22] In conclusion, Dr. Landry confirmed that if the negative parenting and coping behaviours which presented when the Minister became involved in 2014 had not changed, his opinion as outlined in the report would change. He would be less optimistic the parties could successfully parent the children safely.

ISSUES:

Issue #1 - Are the children still in need of protective services?

[23] The court found the children were in need of protective services under s.22(2) (b) and (g) of the ***CFSA*** on July 11, 2014. The first Disposition Order was issued on October 1, 2014. For purposes of this final disposition review, the question is whether the children are still in need of protective services at this point in time.

[24] The concerns that gave rise to this proceeding were:

1. risk of emotional harm from inadequate parenting, a chaotic home life and anger issues;
2. substance abuse;
3. conflict and domestic violence between A.C. and R.R.; and
4. conflict with others.

[25] A.C. is 34 years of age. She is articulate, but I am not convinced she truly understands the meaning of some of the ideas and phrases she uses. She talks about strategies, coping, self-care, triggers and defence-mechanisms. After being involved with the Minister for so long, it is clear she has learned the language of remedial services. However, she does not appear to have benefitted from those

services in a meaningful way, so as to reduce the risk to her children. She also lacks insight into her challenges, which leads to an inability to change.

[26] R.R. is 45 years of age and has been A.C.'s partner for approximately nine years. R.R. was also articulate, and used many of the ideas and phrases heard from therapists and social workers. For example, he described himself as a "crumpled piece of paper" whose wrinkles never heal.

[27] Again though, despite years of remedial services, R.R. did not appear to benefit from them in a meaningful way so as to reduce the risk to the children. For example, he did not understand the impact of verbal abuse of the children. He downplayed A.C.'s tirade against the children, suggesting it didn't really hurt W.C. as it was "just verbal". R.R. was more candid about the challenges he and A.C. face. He displayed some insight, but not a sufficient level to address the parenting problems identified.

[28] In determining whether the children remain at risk, I must consider whether A.C. has learned to control her anger, and can manage the children's behaviours without resorting to verbal abuse. I must consider too, whether both parents have learned to manage their anger so as not to expose the children to their own conflict. In doing so, I must consider the state and quality of the couple's relationship.

[29] One venue where the couple's behaviours can be observed is access. Several witnesses, including R.R., described access visits as chaotic. A.C. testified that at times she has to remove herself from the noise; she will go to the bathroom or have a cigarette to calm down. She admits that noise can trigger her anger.

[30] Highlighting their lack of insight is the fact that A.C. and R.R. both downplayed the Minister's concerns about inappropriate parenting and the children's behaviours at access. They attribute the problems to the location where access is held. The only real behavioural issue they identified is T.C. picking on H.C.

[31] In contrast, workers testified the chaos at access was so problematic that the access schedule was changed to allow only two children per visit, with individual access visits for each child weekly, to ensure one-on-one time with the parents. There are no longer visits when all three children are present. This suggests the challenges this couple face in managing all three children together have not been overcome.

[32] A.C. was asked how the court could be satisfied she would not verbally abuse her children again. She says she has strategies to deal with her anger and stress, and she recognizes the wrong of her ways. However, she admitted that she still reacts to stress and frustration with angry outbursts, yelling and inappropriate threats, usually followed by an apology after she has calmed down. This is a pattern she followed with the worker in particular.

[33] For his part, R.R. acknowledges that he spoke inappropriately to H.C. at access, threatening to put a diaper on her if she continued to behave like a baby. He also swore at T.C. over use of a seatbelt, and he told A.C. to "shut up" and "calm down" in front of the children at access. This suggests that R.R. still struggles with anger and cannot control his outbursts, even when access workers are present.

[34] I accept the evidence of workers that A.C. and R.R. attempted to discipline and control the children at access, but were mostly unsuccessful. Of the three children, H.C. seems to need the most attention, as her behaviours are the most difficult to handle. The evidence is clear that the children demand a lot of attention and will act out to get it. Dr. Landry warned that such behaviour patterns can become entrenched, if parents do not manage it appropriately.

[35] There was also evidence of problems for A.C. and R.R. with anger in their daily lives. These include altercations with neighbours and family members, A.C.'s threat to disclose personal information about a worker on social media, and her yelling at workers during phone calls. In an incident where he was threatened by a neighbour with a hockey stick and responded with physical force, R.R. suggested he learned this was an appropriate way to defend himself from one of his programs. These types of incidents continue even though remedial services have been implemented and in some cases, repeated several times.

[36] Both A.C. and R.R. acknowledge having anger issues. However, they both feel they have their anger under control. R.R. said his relationship with A.C. is very good, and that they now see "eye to eye" on most issues. Despite that, he testified that things go smoothly as long as A.C. gets her way.

[37] I have considered whether the couple's relationship has improved to the point where their mutual support might overcome the stresses of parenting the three children, thus alleviating the potential for anger and verbal abuse in future.

[38] Ed Burke, a clinical therapist with Family Services of Eastern Nova Scotia, testified. He provided couples counselling to the parties, in which the focus was on communications, conflict and conflict management. The parties completed 12 sessions, during which he observed an improvement in their interaction. However, he did not feel A.C. and R.R. are ready for discharge from services, because they are still working on the initial reasons to be seen. He agreed that if A.C. and R.R. are still responding to stressors with anger, cursing, yelling and raised voices, this would present a concern.

[39] Family support worker Margie MacArthur –Eisan testified. She covered a number of topics with the couple, some repeatedly. These include dealing with behavioural difficulties, ADHD, sleep routines, parenting skills, appropriate discipline, self-esteem, sibling conflict, stress management and effective co-parenting. Her services remain ongoing.

[40] Further, I have considered the issue of conflict and domestic violence in the relationship. A.C. admitted to Heather Gouthro with Transition House that she verbally abused W.C., but she did not acknowledge any domestic violence in her relationship with R.R. She did not tell Ms. Gouthro that R.R. was charged with assault in 2009 after he struck her, nor that he pled guilty and served 12 months' probation. She did not mention other incidents where police were called after the two argued. She portrayed theirs as a healthy relationship challenged only by the children's behaviours.

[41] Although there is no evidence of recent domestic violence, the relationship between A.C. and R.R. is volatile. A.C. admits that she still lashes out, and is "very defensive" when it comes to her and the children. Though A.C. acknowledges she likes to be in control, she disagrees with R.R.'s characterization of their relationship, in which he said it is "her way or the highway".

[42] R.R. insists that he can deal with A.C.'s outbursts. He insists if she misbehaves, the police would be called and he would ask her to leave. He acknowledged that A.C. is not always in control of her anger when dealing with the Minister or him. He also admits that things go smoothly only as long as they go the way A.C. wants.

[43] I note that A.C. and R.R. still maintain separate residences. When the children were taken into care, R.R. told workers he only went to A.C.'s home to see the children. Holding onto a separate home suggests he is hedging his bets,

because he recognizes the relationship has not changed and he needs a safe place to retreat should the need arise.

[44] I have also considered the issue of ongoing marijuana use. The Minister acknowledges that in itself, marijuana use does not present a risk to the children. However, combined with a history of conflict, insufficient parenting, poor coping and poor emotional regulation, the Minister argues that marijuana use exacerbates this family's problems.

[45] Dr. Bassam Nassar, a clinical toxicologist with the Q.E.II Health Sciences Centre, testified. He was qualified as an expert to offer opinion evidence in the area of interpreting toxicology results from urinalysis. He prepared a summary of the urinalysis results for both A.C. and R.R. for the period of September 27 – October 14, 2015. The testing was positive for cannabis on 3 dates for A.C., and 5 dates for R.R. in that 2.5 week period.

[46] R.R. acknowledges regular cannabis use. He said its use was initially for chronic pain, though he admits that surgery in 2013 alleviated most of his neck pain. Despite this, he admits he smoked marijuana regularly after 2013. A.C. claims she stopped using marijuana in April, 2014 and only had two or three "slips" after that. One of those occasions was November 24, 2015 after a court appearance which she found stressful.

[47] I make the following findings based on the evidence:

1. I find A.C. has not overcome her life-long anger issues despite numerous interventions and services since 2005.
2. I find that R.R.'s anger issues have not resolved despite numerous interventions and services since 2008.
3. I find the potential for ongoing conflict between A.C. and R.R. is high.
4. I find the potential for future conflict with neighbours and family members remains high, given the personalities and history of the parties.
5. I find A.C. and R.R. lack the necessary insight and emotional resources to effect meaningful changes in their lives and manage the risk of harm to the children from exposure to conflict and violence.

6. I find that despite years of remedial services and the Minister's support, A.C. and R.R. have been unable to implement effective parenting strategies, to safely parent and mitigate the risk to the children.

7. I find that A.C. and R.R. continue to use marijuana for stress relief, a maladaptive form of coping which can exacerbate their situation and create further risk to the children.

8. I find these parents struggled during two hour access visits to control the children, and that the chance of them being able to successfully and safely parent the children without risk, on a 24/7 basis, is poor.

[48] In conclusion, I find the children are still in need of protective services from risks apparent on the evidence.

Issue #2 - If so, should an order for permanent care and custody be granted ?

[49] In determining this next issue, I must consider the following questions:

- Have the least intrusive measures, including services, been attempted and failed ? Or would they be inadequate to protect the children?
- Are there any family members available to care for the children?
- Are circumstances likely to change in a reasonably foreseeable time?

[50] The Minister has provided support to A.C. and implemented remedial services on a voluntary and court-ordered basis since 2005. R.R. has accessed services since 2008. Some services have been completed several times. The Nova Scotia Court of Appeal in **L.L.P.** (**Nova Scotia (Minister of Community Services v. L.L.P.**, **2003 NSCA 1**), held that the goal of services is not to address parenting deficiencies in isolation, but rather to equip parents to fulfill their role in an intact family. Or, as the Minister argues in final submissions:

> *"the purpose of participation in services is to reduce the risk by creating a positive change in the behaviour of individuals."*

[51] A.C. argues it's a positive factor that she sought help from the Minister over the years to address parenting concerns. To some extent, she is right. The problem, as the Minister points out, is that A.C. has relied heavily on the Minister for years in parenting these children. The Minister argues she is no better equipped now to parent the children safely than when the Minister first became involved.

[52] And R.R. testified that in future, they will rely on the Minister for assistance, should the children be returned to their care. While parents must recognize when they need help and seek it out, there is a limit to how long the Minister can support a family. I am mindful of the Court of Appeal decision in ***L.L.P*** (supra), in which the court noted: "Ultimately, parents must assume responsibility for parenting their children. The Act does not contemplate that the [Minister] shore up the family indefinitely."

[53] I find that services to promote the integrity of the family have been attempted and failed. I am not satisfied that further services would be adequate to protect the children. There is no service left to offer that has not been attempted, other than intensive responsive parenting therapy. Dr. Landry testified such therapy is a long-term solution. Given the nature of such therapy, I find it is not possible to access the service and demonstrate sufficient improvement in a reasonable period of time. And given the history and personalities of the parties, improvement in their parenting skills is not guaranteed, or even likely.

[54] No family placements were presented in evidence, so this is not an option available for these children.

[55] I need not consider whether the circumstances justifying a permanent care order are unlikely to change in a reasonably foreseeable period, given that the statutory time limits have now passed. Even if I was satisfied that the parties would cooperate with intensive services on a voluntary basis, I am not satisfied that progress is likely, and the duration of such therapy is long-term, meaning the children would be exposed to risk at home while the parents complete the program.

<u>Issue #3 - If permanent care is ordered, should access be awarded?</u>

[56] The Minister seeks an order for no access, as it plans to seek adoption of the children. It argues that access will impede adoption. There is scant evidence to

support this, other than the worker's testimony that adoption will not be pursued if an access order is granted. It is not clear why that would be the case, given s. 78(5) of the ***Act.***

[57] In any event, the case law is clear law that once permanent care is granted, the onus shifts to A.C. and R.R. to meet the test set out in s. 47 of the ***Act*** (see **G.S. v. Nova Scotia (Community Services)**, [2006] N.S.J. 52 (NSCA); **T.H. v Nova Scotia (Community Services)**, 2010 NSCA 63). Neither A.C. or R.R. advanced evidence on the issue of access after permanent care. Though there is a clear bond with the children, that in itself does not create special circumstances justifying an access order. I find the Respondents have not met the onus under s. 47(2) of the ***Act*** and that the best interests of the children dictate an order with no access.

CONCLUSION:

[58] I find A.C. and R.R.'s plan to parent the children together is not viable, given their cognitive limitations, maladaptive coping, anger issues, ongoing drug use, history of conflict and violence, and the history of chaos in the home and at access. It is not in the children's best interests to be returned to a situation that has not changed sufficiently to reduce the risk.

[59] I also reject the alternative proposed by R.R. that H.C. be placed in his care, while the two older children should be returned to A.C.'s care. The parties have not demonstrated they have the ability to co-parent in a parallel parenting regime any better than in a single family unit. In fact, that scenario would pose its own challenges which I find the parties are unable to overcome. R.R. was unable to cope with A.C.'s calls and demands the night of April 14, 2014 when the children were taken into care. It is highly unlikely he would be able to manage access between A.C. and H.C., given that incident and A.C.'s dominant personality.

[60] I therefore grant the Minister's Application for Permanent Care and Custody of the three children with no access.

MacLeod-Archer, J.