

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

**Citation:** Children's Aid Society of Cape Breton Victoria v. S. W., 2010 NSSC 104

**Date:** 20100312

**Docket:** 56872

**Registry:** Sydney

**Between:**

**Children's Aid Society of Cape Breton Victoria**

Applicant

v.

**S. W., J. F. and K. B.**

Respondents

- and -

**Between:**

**Docket:** 015347

**K. B.**

Applicant

v.

**S. W. R.**

Respondent

**Judge:** The Honourable Justice Theresa Forgeron

**Heard:** December 2 and 3, 2009; January 5, 6, 12, 13, 15, 20, and 26, 2010, and March 12, 2010 in Sydney, Nova Scotia

**Oral Decision** March 12, 2010

**Written Decision:** March 18, 2010

**Counsel:** Robert Crosby, Q.C., for the applicant  
K. B., self-represented  
S. W., self-represented

**Publishers of this case please 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. S. 94(1) provides:

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

**By the Court:**

**I. Introduction**

[1] K. is the eight year old daughter of S.W. ,the “mother”, and K. B., the “father”. K. has little recollection of her father because she lived primarily with her mother and her stepfather, J.F. When K. was a toddler, the mother prevented the father from having access to K. K. and her father have not seen each other since approximately 2004.

[2] The Agency apprehended K. in 2008 because of concerns arising from the inability of the mother and the stepfather to parent appropriately. K. has been diagnosed with serious health problems because of the neglect and the emotional harm she experienced while in the care of the mother and the stepfather.

[3] Since she was apprehended, K. has lived with the same foster mother, B.M., while in the temporary care and custody of the Agency. K.’s functioning has significantly improved since she was apprehended.

[4] The Agency seeks a permanent care order, with no provision for access. The Agency supports the foster mother’s plan to adopt K. The Agency is concerned that K.’s emotional health will be further compromised if she were removed from the foster mother’s care.

[5] Initially, the mother presented a plan to have K. returned to her sole care because she and the stepfather were separated. This evolved into a joint plan on January 7, 2009, after the parties reunited. This plan was again amended on August 7, 2009, when the stepfather terminated his relationship with the mother. At that time, the stepfather put forth a plan to have K. returned to his sole care.

[6] On December 2, 2009, the stepfather’s counsel advised that the stepfather was abandoning his plan, and withdrawing his application for custody and access. The stepfather did not participate any further.

[7] The position of the mother is not as clear. The mother fired her lawyer on August 13, 2009, and then withdrew from the proceedings on August 14, 2009. The mother reappeared during a pretrial conference held on September 8, 2009. During the September 10, 2009 hearing, the mother requested an adjournment due

to ill health. The mother did not participate in the proceedings again until January 5, 2010, when she made a few statements, and then withdrew for the final time. The mother's plan changed throughout the proceedings. At times, the mother sought the return of K. to her care; at times, she was in favour of K. being placed in the care of the father; and at other times, the mother sought access.

[8] At various times, the mother attempted to communicate unilaterally with the court by filing letters and written representations. The court did not consider such communication.

[9] The father did not become a party until August 2009, when he produced an order confirming he had a right to access. The father seeks custody of K., and an order terminating all access between K. and the mother and stepfather. The father proposes that K. be placed permanently in his care, after a period of reintroduction. The father is committed to continuing all professional counselling and treatment as required by K.

## **II. Issues**

[10] The court will determine the following three issues in this decision:

- a) What is the nature of this disposition review?
- b) What plan is in K.'s best interests and based upon changes in circumstances?
- c) What disposition order is in the best interests of K.?

## **III. Background**

[11] K. was apprehended on January 24, 2008. On April 3, 2008, K. was found to be a child in need of protective services pursuant to s. 22(2)(b) and (g) of the *Children and Family Services Act*. The protection finding was made with the consent of the mother and the stepfather. The father was not involved in the proceedings at this stage; no finding was entered against him.

[12] Dr. Aldridge, K.'s psychiatrist, diagnosed K. with the following conditions:

- a) post-traumatic stress disorder, severe in extent and related to prolonged exposure to conflict;

- b) a mild to moderate degree of reactive attachment disorder;
- c) inappropriate sexualized behaviour, which is also a symptom of attachment disorders;
- d) psychophysiological insomnia related to poor sleep pattern and to psychological trauma; and
- e) encopresis of the retentive type.

[13] Upon K. being removed from the care of the mother and the stepfather, she received treatment. As a result, some of the symptoms arising from these conditions reduced, and the encopresis resolved completely.

[14] The first disposition hearing was scheduled for June 26, and 27, 2008. It was extended beyond the legislative time frames in the best interests of K. at the request of the parties, and because the parental capacity assessment had been unexpectedly delayed. The first disposition hearing commenced on July 17, 2008, but there was insufficient time to conclude on that date. Because of vacations and docketing issues, the disposition hearing could not be continued until September 2 and 3, 2008. There was a further delay because of the late filing of a report from the mother's psychiatrist, Dr. Shullaih.

[15] The first disposition hearing was concluded on October 1, 2008; the decision was rendered on October 3, 2008. K. was placed in the temporary care and custody of the Agency, with supervised access to the mother and the stepfather, and with a provision for services.

[16] Various reviews were scheduled after the first disposition hearing. Some of the hearings were initially contested, and then resolved by consent before all of the evidence was presented.

[17] At the request of the mother and the stepfather, and with the consent of the Agency, Mr. Musgrave was appointed Guardian Ad Litem on March 5, 2009. K.'s views were communicated to the court through Mr. Musgrave.

[18] Once the father became involved in August, 2009, he agreed to participate in a parental capacity assessment. While awaiting the completion of the parental

capacity assessment, the parties consented to the continuation of the temporary care order on three occasions, with the caveat that the court would consider the evidence from the prior review hearings when reaching its final decision. Therefore, the evidence considered for the purposes of this decision is that which was adduced during the hearings held on the following dates:

- a) July 17; September 2 and 3; and October 1 and 3, 2008;
- b) January 7, 8, and 14; March 5; August 5, 6, 7, 12, 13,14; September 10; October 15; and December 2 and 3, 2009; and
- c) January 5, 6, 12, 13, 15, 20, and 26, 2010.

[19] The court has considered the evidence from the following witnesses, some of whom testified on more than one occasion: Dr. David Aldridge, the father, Dave Brown, Kim Cooke, Al Jacques, Georgina Johnston, Dr. Julie MacDonald, Margaret MacDonald, Patricia Bates MacDonald, Sheila MacGregor, Georgina MacKinnon, Michelle Biron MacKinnon, Michelle MacLean, Susan MacMillan, Jennifer MacNeil, Cst. Matthew MacNeil, Anne Martin, the foster mother, Krista Morrison, Ray Musgrave, Glynnis Nathanson, Brian Oram, Catherine Penny, Jamie Pollett, T.S., Dr. Zaki Shullaih, Cynthia Stevenson, Cara Lee Taylor, Doug Thorn, and the mother.

[20] Further, the court convened various pretrial conferences in 2008 and 2009. The Agency and the father also participated in settlement discussions with another Justice in December 2009. The settlement discussions were not fruitful.

[21] In addition to the protection proceedings, parallel applications under the *Maintenance and Custody Act* were also initiated by the stepfather and the father. The stepfather withdrew his application on December 2, 2009. The application filed by the father was consolidated, by consent, with the child protection application on December 2, 2009.

[22] Following the completion of the trial, and after a thorough review of all of the evidence and the submissions, the matter was adjourned for oral decision to March 12, 2010.

### **III. Analysis**

[23] **What is the nature of this disposition review?**

[24] *Position of the Parties*

[25] The Agency states that the lack of a protection finding against the father is not relevant because a protection finding has already been entered, and a temporary care and custody order granted. As a result, a change in circumstances must be proven before K. can be returned to a parent. The Agency states that all such decisions must be made in K.'s best interests and in keeping with the legislative scheme.

[26] The father states that the protection finding which was entered in 2008 was against the stepfather and the mother, and not him. He argues that because the Agency has failed to prove child protection concerns relating to him, K. must be returned to his care after a period of reintroduction.

[27] The court is unaware of the mother's position on this issue because she did not provide submissions.

[28] *Decision on the Issue*

[29] The court agrees with the position of the Agency. When a court conducts a disposition review, the court assumes that the orders previously made were correct based upon the circumstances existing at the time. At a review hearing, the court must determine whether the circumstances which resulted in the original order still exist, or whether there have been changes such that the child no longer is a child in need of protective services: s. 46 of the *Children and Family Services Act*; **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)**, [1994] S.C.J. 37, at para. 37; and **Children's Aid Society of Halifax v. C.V. and L.F.** [2005] N.S.J. 217 (C.A.), at paras. 8 and 9.

[30] Once a protection finding has been made, all other orders are subject to the best interests of the child. Section 3(2) of the *Act* furnishes the best interests' definition. When applying the best interests test, the court must balance a non-exhaustive list of factors, values, and interests unique to the child. This approach is confirmed by the Supreme Court of Canada in **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)**, *supra*, at paras. 37 and 38.

[31] **What plan is in K.'s best interests and based upon changes in circumstances?**

[32] *Position of the Agency*

[33] The Agency states that there has been no change in circumstances, if such circumstances are viewed from the child's perspective. K. remains a child in need of protective services in relation to both the mother and the father.

[34] The Agency states that there is no evidence to support the contention that the mother's circumstances have changed for the better. The Agency argues that all evidence points to the opposite conclusion.

[35] In addition, the Agency states that the father's plan of care is likewise not in K.'s best interests. The Agency notes that the father and K. have no relationship. Given her vulnerabilities, K.'s emotional well-being and safety would be sacrificed if she were to be removed from the foster mother's care. The Agency relies upon the evidence of a number of witnesses, with emphasis placed upon the opinions of Dr. Aldridge and Dr. Julie MacDonald. As well, the Agency underscores the importance of emotional well-being and security as best interests principles: **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)**, *supra*, at paras. 39 to 41. Other concerns raised by the Agency include the lack of commitment by the father, and issues involving the dynamics of his family.

[36] *Position of the Father*

[37] The father states that as K.'s biological parent, he is ready, willing, and able to do all that is necessary to ensure that K. develops into a healthy and happy child and adult. He states that there are no safety concerns in his household as confirmed by Dr. Julie MacDonald. The father notes that his blended family has the emotional and financial resources available to parent K. with love, structure, and stability. The father states that he and his common law spouse are committed to K. The father requests an order prohibiting contact between K. and the mother and stepfather.

[38] The father cautioned against the Agency's plan to keep K. in the care of the foster mother because of the safety concerns which have recently surfaced. He

argues that these safety issues confirm that K. should be removed from the foster mother's care, and placed with him, after a period of reintroduction.

[39] *Position of the Mother*

[40] The mother did not present submissions on this issue.

[41] *Decision Respecting the Mother*

[42] I find that it is not in K.'s best interests to be returned to the care of the mother because protection concerns continue to abound. No positive changes in circumstances relating to the mother have occurred since the granting of the last order.

[43] On October 3, 2008, after a contested disposition hearing, the court made a number of findings against the mother in its oral decision. Some of the relevant findings can be summarized as follows:

a) The mother was diagnosed with borderline personality disorder. This disorder developed because she was physically, sexually, and emotionally traumatized during her childhood. She was neglected. Later, she was subject to a torturous relationship with Mr. H.

b) By October 2008, the mother had engaged in services to treat the presenting problems through Mental Health and Dr. Shullaih. In the clinical and supportive setting of the hospital, the mother had stabilized, to the extent possible, for a person with an Axis II disorder. Unfortunately, the mother was unable to replicate this stability within the general community. The mother continued to exhibit disturbing and aggressive behaviours, even during the exercise of access.

c) The mother's disorder prevented her from parenting effectively because she lacked impulse control, anger management skills, and insight. She was reactive and confrontational. The mother's poor choices would continue to cause protection concerns such that K.'s physical and emotional safety would be jeopardized if she were returned to the mother's care.



[44] The evidence proves, on a balance of probabilities, that the mother has not made any gains since the decision of October 3, 2008, despite services. The mother continued to act out during access, causing K. to experience considerable emotional turmoil. The mother was also unable to control her chaotic and disruptive behaviour in the court room. The mother was unable to follow the court order which mandated supervised visits; she initiated unsupervised contact with K. outside the foster mother's residence. The evidence also confirms that the mother continued to be confrontational, reactive, and impulsive when interacting with others.

[45] The Agency, therefore, has proven, on a balance of probabilities, that the mother continues to lack insight, and has not learned the necessary skills to make sound parenting judgements. The Agency has proven that protection concerns continue to exist in respect of the mother pursuant to sec. 22 (2) (b) and (g) of the *Act*. I accept Dr. Aldridge's opinion of October 7, 2009, when he reported that K. did not display symptoms which had been "attributed to traumatic experience, probably because she is not [sic] longer in touch with her mother and stepfather." The Agency has proven that there are no positive changes in circumstances which would permit K.'s return to her mother pursuant to the legislative framework, including s. 42 (2) of the *Act*.

[46] *Decision Respecting the Foster Mother*

[47] The Agency has not proven, on a balance of probabilities, that it is in the best interests of K. to remain in the care of the foster mother. The foster mother lacks the requisite judgement and ability to act in the best interests of K., and indeed has compromised K.'s safety by failing to supervise and protect K. adequately. I draw this conclusion from the following findings which I make:

- a) The foster mother is willing to disregard her legal obligations when she feels that her interests or the interests of her child are threatened. This places K. at a substantial risk of harm. The foster mother failed to discharge her legal obligation on more than one occasion, in the spring to summer of 2009. During that time, the foster mother was aware that her friend, Ms. C., a restricted foster placement, was permitting access between Ms. C.'s grandchildren and her daughter in contravention of a court order. In fact, on one occasion, the foster mother even rode in the car when the grandchildren were transported to their mother's home by Ms. C.

- b) The foster mother did not report these events to the Agency for some time. She hid these facts. The foster mother was concerned about reprisals from the boyfriend of Ms. C.'s daughter.
- c) The foster mother is not remorseful for her conduct, despite her statements to the contrary. I do not find her credible. She displayed little insight as to why her conduct was wrong. She attempted to minimize the seriousness of the problem. The foster mother did not mention this relevant evidence when she first testified on December 5, 2009. When she returned to testify on January 5, 2010, her evidence was disjointed and incomplete. She failed to mention the discussions she had with the Agency in September, 2009; she failed to identify other problem areas which had been addressed by the Agency during their meeting on December 15, 2009.
- d) The foster mother's disclosure was not motivated by remorse. Rather, the foster mother disclosed the incident to the Agency only after she and Ms. C. had a falling out in September 2009. The foster mother made the disclosure when discussing the issue of respite care with the Agency. The foster mother, however, refused to provide details despite being told she must, and despite being told that her conduct was inappropriate. The foster mother showed little appreciation of the harm her conduct could have caused.
- e) The foster mother finally provided details of the C. incident to the Agency in December 2009. In spite of this disclosure, the foster mother felt justified because of her concerns about reprisals. The foster mother does not understand that one's own interests do not outweigh one's legal obligation to report child protection concerns.
- f) This failure to genuinely accept responsibility not only placed the C. grandchildren at risk, but also places K. at risk. There is a real probability that the mother will act aggressively, impulsively, manipulatively, and without regard to consequences, when she learns of the court's decision. There is a real probability that she will again seek contact with K. despite the order prohibiting such contact. K. needs a caregiver who will not be swayed by self-interest, and who is capable of making mature and responsible decisions. The foster mother is not such a care giver.

g) Further, the foster mother has engaged in other inappropriate conduct. The foster mother stopped using approved child care providers, and was employing her sister instead. The foster mother's sister did not supervise K. adequately, and as a result the mother had unsupervised contact with K. The foster mother did not immediately report this to the Agency, despite the seriousness of the situation.

h) The foster mother was leaving K., a troubled seven and eight years old, in her home unsupervised, on a regular basis while the foster mother delivered hot meals to her mother who lived across the street. The foster mother attempted to excuse and minimize the seriousness of this conduct by saying that her visits were of short duration.

i) The foster mother did not advise the Agency that she was experiencing significant stress because her adult son had been involved in criminal proceedings.

j) The foster mother had engaged in corporal punishment of her own daughter by slapping her bottom and grabbing at her chin.

k) The foster mother did not disclose the full extent of the problems to Dr. MacDonald, and attempted to minimize and justify the non-reporting of the C. incident.

l) The Agency has placed the foster mother on "probation" for her conduct. Mr. Brown acknowledged that the foster mother's plan was not without problems.

[48] I find, on a balance of probabilities, that the foster mother will not be in a position to provide the consistent, stable parenting that K. so desperately needs. The foster mother will place her own needs ahead of K. The foster mother lacks insight and good judgement. The foster mother's placement is not a stable one.

[49] I do not make these findings lightly. I am acutely aware of K.'s disorders and the attachment issues which flow from K.'s various diagnoses as reviewed by several witnesses, including Dr. MacDonald and Dr. Aldridge. I am aware that breaking the attachment between K. and the foster mother may increase the risk of psychopathology in K. I nonetheless find that K. will, on a balance of

probabilities, experience more harm if left in the care of the foster mother, than if removed. Further, given the dynamics, it is only a matter of time before K. would have to be removed from the foster mother's residence in any event. My findings are made with full knowledge of the clinical issues confronting K., and the attachment which exists between K. and the foster mother.

[50] I also acknowledge that I have not followed the primary recommendation of Dr. MacDonald who completed various assessments in this proceeding. Dr. MacDonald recommended that K. remain with the foster mother if the foster mother was going to adopt K. Unfortunately, Dr. MacDonald was not aware of the many deficits in the foster mother's plan as described above. Dr. MacDonald's opinion was based upon incomplete information. As a result, I was unable to adopt Dr. MacDonald's primary recommendation. Further, the ultimate responsibility and duty for determining K.'s best interests rests with the court, and not an assessor. This function of the court can never be delegated to a third party.

[51] My decision is also made with full knowledge of K.'s stated wish to be adopted by the foster mother as reported by the foster mother, Dr. MacDonald, and Mr. Musgrave. K. lacks sufficient maturity and responsibility to make this decision. K. is also making her decision based upon the limited, and negative information which the mother conveyed to her about the father.

[52] Based upon the factors stated in sec. 3 (2) of the *Act*, including (a), (b), (c), (d), (e), (f), (i), (j), (k), (l), and (m), I find that it is not in K.'s best interest to continue in the foster mother's placement.

[53] *Decision Respecting the Father*

[54] I find that the father's entry into these proceedings represents a change in circumstances which impacts upon protection concerns involving K. as stated in sec. 46 of the *Act*, and as viewed from the perspective of the child, and in the best interests of the child: **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)**, *supra*.

[55] In addition, I find that the plan put forth by the father is in the best interests of K. for a number of reasons, including the following:

a) Dr. MacDonald stated that in the event K. was removed from the care of the foster mother, or in the event the foster mother did not adopt K., then the father should be considered as a viable placement option. Dr. MacDonald noted that if K. was to be removed from the foster mother's household, she would have to form new attachments, and in such a situation, the father was in a good position to respond. Dr. MacDonald confirmed that the father's household was a high functioning one. There were no child protection concerns present.

b) Dr. MacDonald confirmed that K. requires a stable, consistent caregiver who is emotionally responsive to her needs. Dr. MacDonald also indicated that K. can develop new attachments. Dr. MacDonald stated if K. is able to establish and maintain an attachment for the long term, she will have a better long term prognosis. I find that K. will have a greater chance of maintaining a stable, consistent, responsive, and long term care giver in the person of the father than the foster mother.

c) The father and his family have much to offer K. They are a blended family, where even Dr. MacDonald was unable to discern from her observations which children were biological and which were step children. This bodes well for K. I find that the family will quickly adjust to another blended member. I find that the family are eagerly anticipating K.

d) The father's household is a stable and happy one. The family is functioning successfully. The household is child-centered. The father and T.S. are committed to each other and to their children. I accept their evidence, and the evidence of Ms. Kim Cooke, Ms. Cara Lee Taylor, and Ms. Georgina Johnson.

e) The father and T.S. provide appropriate parenting. The children respond suitably to their parenting styles. The father and T.S. are aware of safety issues and have implemented safe parenting practices with their children.

f) The father and T.S. ensure that the physical, emotional, educational, and social well-being of their children are met. They own their own home. It is clean and tidy, and situate in a good neighbourhood. They have sufficient bedrooms and living space for all the children, including K. The father has resources to ensure that the financial needs of the children are met. There

are healthy foods, clean clothes, age appropriate toys, and recreational activities available to the children. K. will experience security in the father's household.

g) The father and T.S. have done a wonderful job raising their children. Dr. MacDonald's observations showed an engaged family, where much love and care were spontaneously displayed amongst all family members ranging from infancy to teenagers. All family members contribute to the emotional health of the other members. They are a large, but supportive family. K. will be enriched when she becomes part of the family.

h) The father and T.S. will ensure that K. continues to receive the professional treatment that she needs to assist with the transition, and to overcome as many symptoms as possible stemming from the neglect and emotional abuse that she experienced while in the care of the mother and the stepfather. In the past, the parties ensured that the special needs of their other children have been met by working with the school system and by obtaining a counsellor when one was required. I find that the father will be open to learning whatever skills are needed and suggested by the professionals to ensure K.'s best interests are met. T.S. will too.

i) The father and T.S. understand the value of an education and the importance of activities for children. They have assisted their children to maximize their potential. They are appropriately involved in their children's education and have also exposed them to extracurricular activities in an effort to draw out their individual skills and talents. I find that they will do the same for K.

j) The father and T.S. are aware of the difficulties inherent in parenting K., who is a vulnerable and challenged child because of her upbringing. They have past experience in dealing with a vulnerable child. The father is also familiar with various disorders such as aspergers, schizophrenia, PTSD, ADHD, and OCD. The father is committed to raising his child despite the challenges which lie ahead, but with knowledge of the many problems which will likely be encountered. This commitment will be a significant benefit to K. She requires a guardian who will provide unconditional love despite the upheavals.

k) The father and T.S. operate a household based upon respect and with much patience and consistency. There is no corporal punishment. K. will benefit from these parenting features. K. will also benefit from the structure and rules present in the father's household.

l) The father is now able to manage the mother effectively. He will not permit any access between K. and the mother. He will take the appropriate measures with the school and other third parties to protect K. from the mother. The father will call the police and the Agency immediately if the mother breaches the court order. The father is in a stronger position than he was five years ago. I do not have concerns about the father's capacity to protect K. from the mother.

[56] I find that many of the Agency's concerns have been effectively addressed and do not negate the finding that it is in K.'s best interests to be placed in the care of the father.

[57] The Agency suggested that the father lacked commitment to K. In support of this proposition, the Agency noted that the father returned custody of K. to the mother, and further he did not seek enforcement of access rights through the court system since K. was three years old. The Agency also noted that the father missed some appointments with Dr. MacDonald.

[58] The father's conduct in these areas is troubling. However, I find that the conduct does not prove a lack of commitment by the father. I accept that the mother manipulated the police and court workers during the time period when the father was attempting to secure access to K. The extent of the mother's difficulties was not known at the time. The father bowed out because he thought such was best at the time. He was not sacrificing K. to his own interests. The father had no knowledge of the harm that would be inflicted upon K. by the mother and the stepfather. This has only come to light since professional assessments have been completed. I find that the father will do everything in his power to ensure K. is protected from the mother. He will also have the strength of a written decision and court order to ensure enforcement.

[59] The father's failure to attend two appointments, while not appropriate, is understood and is not reflective of his commitment to the process or to K.

[60] The Agency also raised valid concerns about the father's employment plans. I do not find that this now is a factor. I find that the father will not leave the area for work in Alberta, as was his initial plan. The father understands the importance of his physical presence while attachments are being formed. The father understands K.'s vulnerabilities. As a result, the father has secured employment in the local area. He also has savings upon which to draw to compensate for any income loss. I find that the father will be physically present to K. and will not leave for Alberta for work.

[61] The Agency raised concerns about T.S.'s stability and T.S.'s acceptance of more children. I find that these concerns are not valid and have not been proven on a balance of probabilities for a number of reasons. First, Dr. MacDonald noted no protection concerns in the household. Second, Ms. Bates MacDonald, the Agency worker who was involved with T.S. a number of years ago, spoke highly of T.S. She indicated that the Agency's involvement had more to do with advocacy, than with protection concerns. Third, the current evidence proves that T.S. is a kind, caring, and involved mother.

[62] The Agency also suggested that T.S. is not open to having K. because at one point she was contemplating a tubal ligation, and at another point, Ms. Stevenson, who administered family benefits, reported that T.S. did not appear to be a nurturing, warm, or compassionate mother.

[63] I find no connection between T.S. contemplating a tubal ligation and her openness to parenting K. The Agency produced no expert evidence suggesting a causal connection. In addition, I am unable to find a causal connection between the two events from a common sense perspective. To the contrary, T.S. had another child, A., after she contemplated a tubal ligation. All witnesses who have observed T.S. with A., including Dr. MacDonald, observed a strong and healthy relationship.

[64] What a mother may feel before a child is conceived, or indeed during pregnancy, is not causally connected to the level of parenting the child will receive after birth. As an example, K.'s biological mother was very receptive to K.'s birth, however she was not a good parent.

[65] Ms. Stevenson, who is employed by the Department of Community Services, had a brief telephone conversation with T.S. in June 2008. This



conversation has little bearing on the matter before the court. Ms. Stevenson contacted T.S. in June 2008 to have T.S. seek child support from the father who was living and working in Alberta. In an effort to avoid this action, T.S. told Ms. Stevenson that she would be giving the father custody of A. when the father returned in October because she already had three children. Ms. Stevenson reported this conversation to the Agency in June 2008; the Agency took no action. This conversation is not reflective of the loving and nurturing care which T.S. provides her children and which T.S. will provide to K.

[66] The Agency's concern about the father's inability to meet K.'s needs within the time frame allocated under the legislation has already been addressed. I find that he will be able to do so. Further because K. must be removed from the care of the foster mother, K. will have to form new attachments in any event.

[67] In conclusion, I find that there are no child protection concerns respecting the father. I further find that K.'s best interests will be met by being placed in the care of the father, after a period of reintroduction.

[68] **What disposition order is in the best interests of K.?**

[69] Section 42 of the *Act* provides the court with the authority to make disposition orders. Section 3(2) of the *Act* states that disposition orders must be in the best interests of the child. I find that it is in K.'s best interests to be placed in the care and custody of the father, after a period of reintroduction. The terms and conditions are as follows:

- a) K. will continue to remain in the temporary care and custody of the Agency during the period of reintroduction;
- b) The Agency will meet with K., outside the foster mother's residence, and not in the foster mother's company, to explain the outcome of the decision in an age and developmentally appropriate fashion. This meeting will take place in a supportive environment;
- c) The father will write an age and developmentally appropriate letter, in which he introduces himself and each member of his family to K. T.S. and the children may also write a letter of introduction. Pictures of the family and home are to be provided. The Agency will deliver the letters and

pictures to K. outside of the foster mother's presence, although K. is free to share the letters and photographs with the foster mother after she has reviewed them in a supportive environment. This shall be accomplished no later than Tuesday, March 16, 2010;

d) The father will meet with K., in a supportive environment, for access no later than Wednesday, March 17, 2010, for one hour. Access will continue daily thereafter for 2 hours until Saturday, March 27, 2010. After the first visit, T.S. and one child per visit, may also join in the father's access to K. A person who is familiar with K. will be present for access until March 27, 2010, unless K. is comfortable in the father's care before that time.

e) The father will exercise overnight access to K. commencing at 4:00 pm on Saturday, March 27, 2010 until 4:00 pm on Sunday, March 28, 2010; and from 4:00 pm on Friday April 2, 2010 until Sunday, April 4, 2010, at 4:00 pm.

f) Commencing Monday, March 29, 2010 until the next review, the father will have access to K. on every Monday, Tuesday, Wednesday, and Thursday from 3:30pm until 6:30 pm.

g) There are no restrictions on access, although the father will advise the Agency of the general access plans before each visit;

h) Dr. Julie MacDonald shall be retained by the Agency, or such other professional acceptable to the Agency and the father, to provide advice to the parties as to transitional difficulties. The father will obtain advice on how to respond to potential questions from K. about his absence in an honest, but age and developmentally appropriate fashion;

i) Dr. Aldridge shall meet with the father and T.S. to involve them with K.'s care plan;

j) All access between K. and the mother and the stepfather is terminated. Any attempted contact by the mother or the stepfather will be immediately communicated to the Agency, and the police authorities if necessary;

k) Dr. Aldridge, Dr. MacDonald, and other professionals involved with K.'s current care will be provided with a copy of the order and decision once they are released;

l) The matter will return for the final review on Friday, April 9, 2010 at 10:00 am. This is a few days outside of the time limit because the docket does not allow for an earlier appearance.

**Dated** at Sydney, Nova Scotia, this 18th day of March, 2010.

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Forgeron, J.