IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Cite as: Children's Aid Society of Cape Breton-Victoria v. L.D.,
2009 NSSC 352

Date: 20090731
Docket: 61479
Registry: Sydney

Between:

Childrens Aid Society of Cape Breton-Victoria

Applicant

v.

Respondent

L. D. & B. S.

Editorial Notice

Identifying information has been removed from this electronic version of the judgment (publication ban under Children and Family Services Act s. 94 (1))

Revised Decision: The date of the decision was incorrectly noted as 20091118 in the top right hand corner. This decision replaces the previously distributed decision.

Judge: The Honourable Justice M. Clare MacLellan
Justice of the Supreme Court of Nova Scotia
(Family Division)

Heard: March 20, 2009,
June 8, 2009
July 6, 2009
July 22, 2009

Oral Decision July 31, 2009

Written Decision: November 18, 2009

Counsel: Lee Anne MacLeod-Archer
Counsel for the Agency

David Ianetti,
Counsel for the Respondents

[1] S. D. was born March *, 2007 and born, by estimates and approximations, at about 34 weeks as opposed to full term. The matter before the Court today is for a decision on whether or not S. is to be returned to her parents or placed in permanent care for adoption. Those are the only alternatives at this stage. She was apprehended on May 15, 2007. She was found to be a child in need of protective services following a hearing on September 10, 2007, pursuant to the instructions under s. 40 and a finding was made under Section 22(2)(a) of **The Children and Family Services Act**..

[2] 22(1) defines what we must examine in making a finding of substantial risk; and that means there has to be a real chance of danger that is apparent on the evidence. Section 22(2)(a) reads:

> A child is in need of protective services where
>
> (A) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

[3] This decision was never altered from the time I rendered it on September 10, 2007. It was not the subject matter of appeal and it remains the main hurdle in this

case for the Respondents. The relevant portions of that decision are paragraphs 5, 6, 7, 8, 9 and 10, which I will read into the record.

> (5) Doctor Iles was the first doctor to be called. She is a radiologist. She refers to her examination of a skeletal survey, which I will call an x-ray, which was taken on the 14th day of May, 2007 and read by her. She refers to fractures of both the femur and the tibia, which she describes as CML , or classic metaphyseal lesions, and she outlines this in Exhibit 1, which is a very short report from her referral. The referral she was given was basically one line to examine the x-ray for CML, to view whether or not there is any liklihood of child abuse.
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> (6) She describes the type of injury as one that would have to happen from a twisting motion to the legs and she views child abuse, in this particular situation, as almost a certainty. She views the time line as "most likely". These are her words, I am quoting them, between the child's first discharge when she was 37.5 weeks and her return as a result of the apnea incident. Further, in her testimony, she describes the injury as sheering of the knee.
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> (7) She had never met the parents; she didn't have any background information; she had no knowledge of the methadone or any drug used by them; and she indicates that in her testimony she would be examining only the issue put forward in the x-ray and not any other background material so that she would be able to be objective.
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> (8) She did examine all other causes, possible causes, but found them to be inconsistent with the survey or x-ray.
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> (9) She also placed emphasis, in her opinion, that there was healing in the second set of x-rays, which ties in with her view that it was most likely the event took place while the child was in the care of the parents.
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> (10) I found her to be objective in her findings and not disinterested, but professionally removed from any other factors that may cause some witnesses to give a slant to their terminology. She was vigorously cross-

> examined on every aspect as well as some other possibilities and was able to deal with them in an objective and neutral tone.

[4] Dr. Iles explained the broken tibia and femers; which she called typical of non-accidental trauma. Medical evidence confirmed that L. D. was in the methadone clinic before and during her pregnancy with S. and after S. was born. At the time of the protection hearing, both parents were using marijuana. At protection hearing, the Court concluded at paragraphs 45, 46, 47, 48, 49 and 50:

> (45) I do find that both parents have exhibited a lack of awareness. The mother was on methadone, trying to get off the use of prescription drugs, but she is using marijuana and using marijuana during the pregnancy. It should have been an incredible wake up call when you have a premature baby, whose first introduction to this world is that she has to be treated for withdrawal. Granted it is withdrawal of methadone, but that should certainly be a wake up call and then in the middle of this very serious matter with one infant, the parties elect to have another child.
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> (46) Now in Canada, of course, it is a free country and people can certainly, if they are lucky enough to conceive children and they are certainly entitled to do so, but at this particular point in time one has to question the wisdom of putting this additional responsibility on the parents, especially where Ms. D. has not completely weened herself from methadone and now she will have another baby, who might also have to go through withdrawal and the administration of a narcotic to enable the baby to function in his/her introduction to this world. I would think it would be time to take a pause and focus on this case, to focus on S..
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> (47) That is not the subject matter of a protection hearing. However, the lack of awareness is the subject matter of a protection hearing and that is my basis for my finding that they both appear to be most unaware of problems that are front row and centre of infant care or ought to be.

> (48) With the exception of Doctor Ornstein, I find that the other doctors called by the Agency are clear in the evidence of non-accidental trauma causing four (4) broken bones in a two month old premature baby. No evidence of accident was provided. The force would have to have been an amount that precluded common sense. I accept Doctor Iles evidence that it was most likely that the injury occurred between the baby's hospitalization; that is when she is in the care of the parents.
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> (49) Mr. Ianetti provided another medical opinion from an article written by a physician whose qualifications were not presented; however, the doctors who gave evidence would not accept this opinion in the article provided. The author of the article did not provide a report nor did he give evidence at protection hearing.
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> (50) As I found already, there is no evidence to indicate that the parents were any way responsible for the incident of apnea. On the balance of probabilities, I find this baby suffered serious leg injuries while in the care of the parents. I am unable to say which parent, or both, caused the injury but sometimes you can say one caused it and the other failed to protect. In this particular case, where no explanation is given by either parent, I make a finding against both of them under s. 22(2)(a) of the **Children and Family Services Act.**

[5] That is how the matter stood on September 10, 2007. The Court reconvened for first disposition. Exhibit #1 is the Plan the Agency filed for that first disposition which contained an application for continued temporary care of S. and referred the parents to Parents Together group and to Family Services. A Parental Capacity Assessment was ordered. That Plan, at paragraph 3, set out the expectations that the Agency had as of December 1, 2007 that would have to be met before S. could be returned to the parents. At that point in time, it was planned that if remedial measures

went well, and that included an acknowledgement, then S. could be returned to her parents. In that Plan, page 4, paragraph (h):

> It is anticipated that, with the completion of the Parental Capacity Assessment and the successful implementation of remedial services, the child will be returned to the custody and care of the Respondents.

and the Plan sets out it would take three (3) months to examine the services and the outcome of the services. The Plan at page 2, paragraph 3, the category is:

> **Criteria by which the agency will determine when its care and custody or supervision is no longer required**.

> And the answer in that particular section is:

> The Applicant will make a determination regarding the necessity of ongoing child protection services when risks to the children have been reduced as evidenced by the successful completion of the prescribed services and demonstrated progress in the accepting responsibility for the child's safety. Also, the Respondents would demonstrate adequate understanding and skills to achieve a safe and healthy environment for the child.

> That was how matters stood on December 1, 2007.

[6] On the return date, the Parental Capacity Assessment had just been received and so the matter was adjourned further to give the parties and the Court a chance to read the Parental Capacity Assessment which was lengthy. It was prepared by Mr. Bryson. A short adjournment was granted to March 18, 2008 and it was at that point that the

Agency advised the Court they would be seeking permanent care. Counsel for the Respondents requested full medical disclosure and the matter was adjourned to April 16, 2008. It was appreciated that the hearing, at that point, would require at least three (3) days.

[7] In April, 2008, dates were set for September 15, 2008, October 21, October 27th, 2008 for full hearing. The matter was rescheduled to November 5th and 6th, 2008. On November 5, 2008, it was agreed that the Childrens Aid Society's Plan filed just the day before was late and contained protection concerns that had not been proven in evidence. Also, Mr. Ianetti indicated to the Court that he wished to call new evidence. Ms. MacLeod-Archer was instructed to prepare a new Plan that was based on the evidence. All parties agreed that it was in the child's bests to re-start the matter, as the time was running short. Given S.'s age, the time line ended on December 3, 2008. There was still a fair amount of work to be done in fairness to the Respondents and more importantly in S.'s best interests. It was agreed by counsel in an open Court that the time would restart from the December 3, 2008 deadline, that the protection finding made would remain. Section 39 would not have to be repeated and the matter would move directly to the disposition stage within a six (6) month

period. Again we were looking for three (3) days, hopefully uninterrupted, and that was examined at pre-trial.

[8] The new evidence that Mr. Ianetti sought to introduce on behalf of the Respondents was argued on January 13, 2009 regarding the use of the polygraph. A decision was rendered by this Court on January 20, 2009 and the polygraph was admitted solely for the purposes of showing that the Respondents did agree to take the polygraph and it was not in dispute that they had been asked at the investigative stage into S.'s injuries the year previous but were on legal instructions not to take the test and so they didn't. In any event, they did take the test and so it was no longer open for the Agency to complain that they had not co-operated with that request.

[9] A pre-trial was held on February 4, 2009 and the parties intended to call twelve (12) witnesses. The matter was then adjourned again due to the illness of counsel and again we had received a Parental Capacity Assessment update shortly before the Court date and so the Court lost two (2) days due to those two (2) issues and we started evidence finally on March 20, 2009 and the Agency Plan was filed, the last version, on March 18, 2009 and that is marked Exhibit #1 in this hearing. The

Applicant/Agency sets out in Exhibit #1 of this hearing, the steps taken by the Agency and the expectations of the Agency.

Agency Plan:

The description of services provided to remedy the condition and situation on the basis of which the child was found in need of protective services.

(a) agency services:

Protection Case Worker - Responsible for: development and implementation of the case plan; arranging services to assist the family in addressing the protection concerns; monitoring the family's progress; supervising the child's placement; providing support and direction to the Respondents throughout the Agency involvement.

Temporary Care and custody Caseworker - Social worker in place for each child, to meet with the children on an ongoing basis, arranging/monitoring services for the children and ensuring the children's overall needs are being met while in the Temporary Care and Custody of the Agency.

Access Co-ordinator - Developing access schedules; arranging/providing transportation for the child to and from access visits with the Respondents, L. D. and B. S..

Transportation - Taxi approval provided by the agency to the Respondents, L. D. and B. S. to facilitate attendance at access visits and counselling appointments.

Foster Home Program - Provides stable placement for the child where the child's emotional, physical and developmental needs are met; provides support and safety for the child. Foster home worker provides support to foster family and follow up as needed.

(b) other community resources:

The following community based resources have been made available to the Respondents, L. D. and B. S.:

Provincial Income Assistance Program - Caseworker with the Department of Community Services supervises the provision of income assistance to the Respondent, L. D..

Parents Together Group - Arrangements were made with coordinator of this group, Donna MacDonald, for the Respondents, L. D. and B. S. to have the opportunity to attend this support group. Opportunities in this group include: learning how to deal with conflict, sharing your life experience to benefit others, forming lasting relationships, celebrating both personal and group success and supporting others through difficult times.

Assessment Services - Michael Bryson, Clinical Psychologist of Bryson Counseling and Consulting Incorporated completed a Parental Capacity Assesment with respect to the Respondents, L. D. and B. S. and the child S. D.. This report was received by the Applicant on February 26, 2008. An updated report was received on March 17, 2009.

Addictions Services - Assessment and treatment for abuse of alcohol/drugs is available. The agency has requested that the Respondent, L. D., engage in this service for the purpose of drug treatment and ongoing counselling. The Respondent, L. D., has engaged in this service and reports having completed this service in December, 2007. However the Agency has since received information from Addictions Services that she was discharged to another service in December, 2007 and confirmation has never been received that L. D. was discharged from that program upon completion of the recommended treatment.

(4) Where the agency proposes to remove the child from the care of a parent or guardian:

(a) Explanation of why the child cannot be adequately protected while in the care of the parent or guardian (refer to the condition or

situation on the basis of which the child was found to be in need of protective services):

The Children's Aid Society of Cape Breton-Victoria initially became involved with the Respondent, L. D., in April of 2002. A Protection Application was filed on August 20, 2002 in relation to Ms. D.'s first child, S. D. (d.o.b. April *, 2002) and a finding under **Section 22(2)(k)** was entered by consent. After L. D. accessed services the child was returned to her care under a Court Order dated September 15, 2003; however the child has resided with the maternal grandmother since approximately June 2003 to present.

The Children's Aid Society of Cape Breton-Victoria re-involved with the Respondent, L. D. and became involved with the Respondent, B. S., in April, 2007.

In May of 2007, the Provincial Emergency Duty received a referral regarding the Respondent's, L. D. and B. S.. The concerns were that the baby, S. D. had been taken to the Cape Breton Regional Hospital the previous day via ambulance because the baby had stopped breathing. Subsequent investigations revealed metaphyseal fractures of both S.'s legs and as a result, the child S. D. was apprehended and taken into the care of the application on May 15, 2007.

A Protection Hearing was held on August 2, 7 & 10, 2007 at which time the Court determined that S. was a child in need of protective services under **Section 22(2)(a)** of the **Children and Family Services Act.**

(b) Description of past and present services:
Services that have been attempted and their current status
(Include any reasons why the services have failed, if applicable):

On October 5, 2007, the Agency requested that the Respondent, B. S., participate in the Anger Management program through Family Services as part of the case plan. On this date both L. D. and B. S. acknowledged that B. S. does have anger management issues and B. S. agreed to

participate in this service. A referral was made by telephone by the agency to Family Service on October 5, 2007. This referral was made in the presence of the Respondents, L. D. and B. S.. Following this referral B. S. was responsible for following up with Family Service on the status of his intake.

On November 26, 2007, the Agency followed up with the initial referral to Family Service in the form of a written letter, the Respondent, B. S.'s contact information was given to Family Service and the agency was since advised that workers at Family Service have attempted to contact B. S. several times and he had not made any contact in return.

On December 13, 2007, the Agency contacted Family Service regarding the status of the Respondent, B. S.'s intake as B. S. had phoned the Agency making accusations that he had been lied to by the Agency about a referral being made. Family Service advised that they had received a phone call from B. S. on December 12, 2007 in which they described him as being very angry on the phone with workers and difficult for them to talk to.

The Agency has since received information that Mr. S. has made a self referral to an anger management program and he reports he is attending this program.

The Agency requested that the Respondent's, L. D. and B. S., engage in taking a Parental Capacity Assessment with Dr. Reginald Landry. L. D. attended her first appointment with Dr. Landry on November 6, 2007. On November 8, 2007, the Agency received a phone call from B. S., he reported that L. D. had her appointment with Dr. Landry on November 6, 2007 and the assessment put her under so much stress that it caused her to go into early labour. B. S. reported that because of the stress this put L. D. under, he will not be completing the assessment either. B. S. expressed further concern that the agency would hold it against him when he reveals in a Parental Capacity Assessment that his father was an alcoholic and that he has a charge of drinking and driving.

On November 9, 2007, the Agency received a phone call from the Respondent, L. D., she was calling from the Cape Breton Regional

Hospital. L. D. reported that she feels the stress from the Parental Capacity Assessment and not knowing if she will get her back caused her to go into premature labour.

On January 4, 2008, the Agency received a phone call from Dr. Landry's office advising that they would be closing the file for the Respondents, L. D. and B. S.. Protection worker was aware that L. D. and B. S. were no longer willing to meet with Dr. Landry as they had requested to complete the assessment through Dr. Michael Bryson.

A Polygraph Test was offered by the Cape Breton Regional Police as part of the investigative plan in relation to the child S. D.'s injuries. The Respondents, L. D. and B. S. refused to engage in this testing at the time of the police investigation, reporting the refusal to be under the advice of their lawyer. Close to a year later L. D. and B. S. underwent polygraph testing with the Cape Breton Regional Police Services on April 30, 2008 and May 1, 2008.

The Respondents, L. D. and B. S. completed a Parental Capacity Assessment with Dr. Michael Bryson and an updated report in 2009.

Services that have been refused by the parent or guardian (specify the reasons for the refusal and any renewed offer of services made subsequent to that refusal)

The Respondents, L. D. and B. S., have not followed up with the following recommendations:

(1) Parents Together Group - was offered to the Respondents, L. D. and B. S., to address their lack of having a support network. The purpose of this was to decrease isolation and to offer a supportive network.

Services that have been considered, but would be inadequate to protect the child (specify why the services would be inadequate to protect the child).

A list of recommendations have been provided to the Agency by a Clinical Psychologist, Michael Bryson, as the result of the Parental

Capacity Assessment completed by the Respondents, L. D. and B. S.. Although the objective information in this assessment was useful, the content in this assessment still does not address the concerns regarding the child's injury and the agency still does not have an explanation of the occurrence of these injuries

(c) Possible placements with a relative, neighbour or other member of the child's community or extended family that have been considered and rejected and reasons therefore.

Consideration was made by the Agency toward a family placement option for the child, S. D.. The family placement options set forward by the Respondents, L. D. and B. S. were placements with either of their parents. It was decided that based on the fact that Mr. S. is living with his mother J. S. and that his anger management and impulse control issues had yet to be addressed that placement would not be an option. It was further discussed that there is still physical risk to this child and that access with the child is currently being supervised by the Agency. The Respondent, L. D., has also displayed erratic behaviour and it is yet to be determined who caused these injuries to the child, S. D.. The overall concern was that if the child, S. D., was placed at home with a family member, then access with the Respondents, L. D. and B. S., would no longer be supervised. Therefore the agency made the decision to not offer a family placement.

(d) What efforts, if any, are planned to maintain the child's contact with the parent or guardian (specify the proposed frequency and terms of any such contract):

At the present time, the Respondents, L. D. and B. S., have supervised access three times per week for a duration of l l/2 hours per visit with the child, S. D.. These visits take place weekly at the C.A.S. Children's Training Centre office in Sydney. The Respondents, L. D. and B. S., have attended access, but there continues to be difficulty in attendance with Mr. S. as he reports he cannot leave work in time to attend the access visits within the agency hours of operation , 8:30 a.m. - 4:30 p.m. Access visits have been changed several times in an attempt to accommodate the Respondents, L. D. and B. S..

Should an order of Permanent Care and Custody be granted, the Agency plan is to place this child for adoption. Should an order for Permanent Care and Custody be granted, continued face to face access contact is not believed to be in the child's best interests.

6. **Where the agency proposes that the child be placed in the permanent care and custody of the agency:**

(a) Why the circumstances justifying the proposal are unlikely to change within a reasonable foreseeable time not exceeding the maximum time limits (specify the barriers to change, agency efforts to remedy or alleviate those barriers and why those efforts would be unsuccessful with the maximum time limits provided in the Act):

The initial objective of the Agency's intervention in terms of the case plan, was for the Respondents, L. D. and B. S., to address the primary areas of concern and to demonstrate that they can work toward goals to achieve the desired outcome of the intervention. The Agency outlined in the initial case plan that the primary problems were the unexplained injury to the child, Mr. S.'s anger issues, the parents addiction issues and their lack of having a support network. The goal was to have the Respondents, L. D. and B. S., accept responsibility for the child's injuries, work on and demonstrate improvement with anger management skills, maintain a drug free lifestyle and to decrease isolation by developing a supportive network.

The Respondents, L. D. and B. S., were responsible for taking steps and engaging in services to attain the desired outcome of this intervention. The Agency requested that both Ms. D. and Mr. S. take a Parental Capacity Assessment, that Mr. S. attend Family Services for anger management/counselling, that both Ms. D. and Mr. S. participate in random drug testing, counselling or assessment and the Parents Together Support Group was offered to both Ms. D. and Mr. S. for the purpose of deceasing isolation. Both Respondents had indicated that their long term

plan involved resuming full time care and supervision of their child, it is the position of the Agency that it was important for both parents to accept responsibility for the child's injury and to participate in services offered. Neither of the Respondents have worked toward this plan.

The child, S. D., has been placed in the care of the Agency since May 15, 2007. The agency is proposing that the child be placed in the Permanent Care and Custody of the Agency due to the Respondents, L. D. and B. S.'s refusal to acknowledge the major presenting problems listed and their lack of participation in services. It is unlikely that this will change in a reasonable or foreseeable time. Both Respondents have participated in a Parental Capacity Assessment but have not accepted responsibility for the child's injuries. The Respondent, Mr. S., has continued to display an inability to control his anger with several incidents arising since the Agency became involved. Ms. D. has also demonstrated an inability to control anger at times as well. At times, both have acted in an aggressive manner, being extremely verbally abusive and demonstrating an overall inability to control their anger and impulsiveness. Ms. D. has participated in the Methadone Maintenance Program and has reported completing this in December. The Agency has since heard evidence in court that Ms. D. in fact did not complete this service with Addictions Services.. Ms. D. and Mr. S. have not engaged in taking part in a support group to help decrease isolation and support in their lives. Access contact has been inconsistent with Mr. S. with frequent cancellations, late arrivals and changes to the access scheduling.

The Agency believes it to be in the best interests of the child should an order of Permanent Care and Custody be granted, to place this child for adoption. Should an order for Permanent Care and custody be granted, continued face to face access contact is not believed to be in the child's best interests as it may impede the child's ability to stabilize and attach in an adoptive family. Should an order for Permanent Care and Custody be granted, a final visit for the child would be arranged with the Respondents, L. D. and B. S..

(b) **Description of the arrangements made or being made for the child's long-term stable placement (refer to the child's present placement, any intended changes to**

that placement, any special needs of the child, availability of long-term placements, agency plans to identify a permanent placement for the child, adoption prospects, etc.):

The child, S. D., will be two years old in March, 2009. S. has had ongoing follow up with her Pediatrician, Dr. Roderick Bird, and with the I.W.K. Perinatal Follow Up Clinic with Dr. Michael Vincer. S. currently attends weekly Physiotherapy appointments with Wanda Krawchuck at the Cape Breton Regional Hospital. Continued follow up of medical attention is required for this child due to her premature birth. S. is thriving and continues to do well in her current foster placement and continues to make developmental gains.

The agency works from the perspective that all children have the opportunity of a permanent placement. The agency's current plan is to complete a thorough assessment of the child's needs and determine an option of permanent placement that would be in the child, S. D.'s best interests.

(c) Access, if any, proposed for the child and any terms and conditions to be included in access arrangements:

As noted previously herein, should an order of Permanent Care and Custody be granted, the Agency plan is to place this child for adoption. Should an order for Permanent Care and custody be granted, continued face to face access contact is not believed to be in the child's best interests as it may impede the child's ability to stabilize and attach in an adoptive family.

Should an order for Permanent Care and Custody be granted, a final visit for the child would be arranged with the Respondents, L. D. and B. S..

DATED at Sydney, Nova Scotia, this 19th day of March, 2009.
Signed by Agency Worker, Ainslie Kehoe.

[10] The Plan sets out what services were provided to the Respondents and to S.. There was a Protection Case Worker, a Temporary Care and Custody Worker, an Access Co-ordinator, transportation was provided and the foster home program was made available to the baby. Under the category of other community services, the Respondents had the benefit of the Provincial Income Assistance Program, the Parents Together Group was recommended and a referral made (which is Exhibit #2). Assessment services were done by Mr. Bryson. Originally Dr. Landry was to do that assessment, but the Respondents were not impressed with his first appointment with Ms. D. and therefore they requested Mr. Bryson and that was complied with. Addiction Services were recommended to them as one of the Agency's request. The Plan goes into each one of the services and what happened to that service and how it did or did not result in any noted improvement. The main paragraph, again I'm referring to the crux of this matter, the third full paragraph (Exhibit #1, March, 2009, pg. 6):

> The child, S. D., has been placed in the care of the Agency since May 15, 2007. The Agency is proposing that the child be placed in the Permanent Care and Custody of the Agency due to the Respondents, L. D. and B. S.'s refusal to acknowledge the major presenting problems listed and their lack of participation in services. It is unlikely that this will change in a reasonable or foreseeable time. Both Respondents have participated in a Parental Capacity Assessment but have not accepted responsibility for the child's injuries. The Respondent, Mr. S., has continued to display an inability to control his anger with several incidents arising since the Agency became involved. Ms. D. has also demonstrated an inability to

> control anger at times as well. At times, both have acted in an aggressive manner, being extremely verbally abusive and demonstrating an overall inability to control their anger and impulsiveness. Ms. D. has participated in the Methadone Maintenance Program and has reported completing this in December. The Agency has since heard evidence in court that Ms. D. inf act did not complete this service with Addictions Services. Ms. D. and Mr. S. have not engaged in taking part in a support group to help decrease isolation and support in their lives. Access contact has been inconsistent with Mr. S. with frequent cancellations, late arrivals and changes to the access scheduling.

[11] That Plan is the plan of March 18, 2009. Evidence began on March 20, 2009 and continued on June 8th, July 6th, with submissions on July 22, 2009 and oral decision rendered on July 31, 2009. The Court heard fifteen (15) witnesses, one of whom was called twice and evidence consumed three (3) days separate from the submissions, which were lengthy. At this point, I should indicate, counsels' submissions, which I had transcribed for my benefit, were both excellent, excellent submissions.

[12] I will try to paraphrase the evidence that I heard over these four (4) days. It is, of course, longer than it would be if I had an additional week to work on the form and to edit. However, it is not in anyone's best interest to keep this matter unresolved.

[13] The Court first heard from Ashley Rice, who is an Access Supervisor, on March 20, 2009. She has been the Access Supervisor since the fall of 2008. She stated originally bonding was a concern between S. and her folks but that problem resolved and that she only had to very, very sparingly ever intervene with the parents and that they were able to enjoy good access with the baby.

[14] We next heard from Diane Degaust, an Access Facilitator, and she has been on the file since January, 2008. She stated while the mother was in Halifax, unavoidably, in relation to the second baby, S., the father did miss a lot of visits; but when both parents came for access, she found them to be attentive and they conducted themselves as they should. She found that their bonding with the baby had improved and S. was going to them on her own. They were affectionate with her and Ms. Degaust did not have to intervene at all to correct any of their access practices.

[15] The Court next heard from Ainslie Kehoe, who was a Protection Worker, and she has been on the file since October, 2008 and she prepared the two plans referred to in this decision. She went through the services that the Agency had provided. These services are all outlined in the later plan.

[16] In her view, neither of the Respondents followed through with the Parents Together Group, which was available in Sydney and North Sydney. The Respondents did not like the North Sydney location and so she indicated that the Sydney location was made available to them. There is a debate as to whether or not a referral was ever made by the Applicant and it was provided, ironically in cross-examination (Exhibit #2), which is the Parents Together referral. The worker who would be teaching was Donna MacDonald; and the Respondents were referred by Nicole Stubbert. This was a program designed to decrease the isolation for the Respondents and to give them some support. I note that the Respondents did not attend this course but attended other courses that the Respondents thought would fill that void.

[17] I also note that the referral was made by Nicole Stubbert and she was the worker that Mr. S. advised he got along well with, but neither of the Respondents attended that course. Mr. S. advised he could not work with his current worker, Ms. Kehoe. In any event, the Respondents didn't go to the Parents Together Group and Exhibit #2 shows this referral was made on October 15, 2007 and the class was to start shortly thereafter. The course location was changed to deal with a concern Ms. D. had that she may meet a certain person who lived nearby and this would cause her

discomfort. The location of the course was moved . However, the Respondents did not attend.

[18] The Childrens Aid Society required both parents to deal with their addiction problems but they never received any confirmation from any of the programs that L. D. completed her Methadone Clinic. L. D. advised that she did complete the Methadone Program through Addiction Services and that she believed that she was discharged in 2007. In examination it was revealed that her dosage was reduced to one (1) mg. and she felt that was fine for her to take herself out of the clinic and that she has not used methadone since. The program was not technically completed but she was very close, I believe, when she conceived her third child, S.. Her dosage commenced at 45 -55 mg. and she was able to reduce it to 1 ml. when she left the program. She thought she would be required to go to Halifax to get to take that final step. I didn't hear whether or not she could have rejoined the Sydney clinic. That was never raised in evidence so it was left unanswered. As indicated, the completion confirmation was never received from the Methadone Clinic in Halifax or Sydney. A lengthy letter was provided in evidence on Direction 180, Exhibit #3. The first paragraph describes the clinic, the second paragraph states:

> L. D. was hosted by the Direction 180 clinic during her pregnancy in 2007. L. first came to the Direction 180 clinic upon admittance at the

> IWK Grace Hospital in November - December, 2007. During this time, L. was voluntarily weaning from her methadone. At her first physician appointment on November 10, 2007, L. was on a methadone dose of 25 mg. Her last physician appointment with Direction 180 was on December 13, 2007 whereby her methadone dose was at 4 mg. L. returned to North Sydney, Nova Scotia on December 13, 2007 with a dose of 4mg. and Direction 180 had no further contact with L..

Exhibit #3 shows that she stayed with that program just until she was almost complete but for reasons Ms. D. felt she could complete the withdrawal on her own and discussed this with her doctor. She did not take the final step, but did not return to using heavy drugs.

[19] Mr. S. was required to take an Anger Management course from Family Services. Nicole Stubbert indicated that she supposedly made a phone call referral and then there was a follow up letter that was sent, I believe, in November, 2008. Mr. S. made his own referral as he did not accept that Childrens Aid had made one. The Childrens Aid Society received confirmation of completion in November, 2008 from Anger Management Counsellor, Mr. Burke. In October, 2007, both Respondents had agreed that anger was an issue for Mr. S. and had to be addressed.

[20] The Childrens Aid Society have, for the past two years, continually wanted the parents to acknowledge or explain or give some reasonable explanation that there was

a non accidental injury, for the parents to acknowledge that this happened and to take responsibility, as well as to deal with addiction problems and Mr. S.'s anger problems. The Childrens Aid Society also offered, as I have indicated already, Parents Together in order to decrease isolation and that was offered to both parents in October, 2007. I note much is made of the fact that there was only one name on the referral but if it's Parents Together, it is almost implied, as the worker indicated, that that meant that the both of them could attend. In any event, even taking in the narrowest point, if a parent would go, the referral was made in L. D.'s name. She did not attend.

[21] The psychologist was changed from Doctor Landry to Mr. Bryson because Mr. S. did not like the form of the first session that Ms. D. had with Dr. Landry. Mr. S. believed that it upset her to the point that she commenced early labour with the second baby, S..

[22] The Children's Aid Society asked at the onset of their investigation for a polygraph and it was refused by the Respondents. As I have indicated that was done on the instruction of counsel. A year later the polygraph was taken by the Respondents. However, the polygraph in and of itself has inherent limitations. Approximately 1 year after the request was made, the Respondents asked if this

opportunity was still open. Agency counsel, Mr. Crosby, told them it was still open and they took the test. I did admit the evidence to show that the test was taken.

[23] The Childrens Aid Society advised that they found the Bryson recommendations were helpful, but the recommendations failed to deal with the crux of the matter. It failed to explain how S. was injured and so the risk has not been reduced by recommendations contained in the Parental Capacity Assessment. So the Agency concluded that the recommendations in the Parental Capacity Assessment, while these may be helpful, were inadequate to reduce the main risk, which is S.'s physical injury and whether that would happen again.

[24] The Childrens Aid Society assessed placement with both grandmothers and found neither one of them to be appropriate, given the risk that would arise from their inability to supervise access, particularly with Mr. S.'s mother because he was living with her, as this couple do not live together in the same house. So the extended family was examined but found that they would not be able to provide the supervision required for access in a situation where there was a very young child with unexplained fractures.

[25] Access was set up and, according to Ms. Keogh, changed on several occasions. She believes she accommodated the Respondents' requests for changes. I know that this Court tried to work through some changes too once Mr. S. started to work. So once Mr. S. started to work obviously the hours were difficult. At the same time, Ms. D. had to go back and forth to the IWK in relation to the second baby, S.. So the schedules were difficult. The Agency stated they addressed these access difficulties; the Respondents stated the Agency did not.

[26] Given the relationship between Childrens Aid and the Respondents, access was to be at the Childrens Aid Society offices, first in North Sydney, but when S. returned to Cape Breton it was expected that she would be on oxygen. Everyone accepted Doctor Lynk's opinion that S. shouldn't be travelling a great deal. So it was easier for the parents to come to Sydney than to take the infant to North Sydney and therefore access was arranged in Sydney and transportation was provided to the Respondents for them to come to Sydney for their visits.

[27] At the time that Ms. Keogh gave evidence, that is March 20, 2009, the Childrens Aid Society felt there was no change in the foreseeable future and this last plan sought permanent care. The Applicant, Childrens Aid Society staff and this

witness believe that there is no change that will happen within the outer time limits of June, 2009.

[28] I note that several varied Court scheduling was necessary through October, 2008 to final hearing, which started on March 20, 2009 and those were due to illness on the part of the Judge, illness on the part of counsel, Parental Capacity Assessments received late when no one had a chance to digest them. As well the usual rescheduling difficulties were experienced so the hearing did take longer than planned but still within the extended time frame.

[29] During this witness's time as a Long Term Protection Worker, she also, on occasion, had to oversee Ms. Kehoe's access and this started in October, 2007. The witness chronicled the Respondents would, if they were annoyed, leave the access to call their lawyer during the access visit and then come back in. Ms. Kehoe advises Ms. D. threatened her on Christmas Eve because the Christmas visit had been reduced by half an hour. Ms. Keogh maintains, and this was confirmed by one of the Respondents, that they were advised the morning of that visit that the visit would only be an hour not an hour and a half because the Children's Aid Society had to supervise other parents who also wanted Christmas Eve access.

[30] When S. came to this access session and her mother took off her coat, she found a plastic hanger in the jacket when the child was undressed and this really upset L. D. as she believed the hanger caused a pink mark on the baby's neck. Ms. Kehoe said that Ms. D. took the hanger and threw it across the room. Ms. Kehoe said that she had been with the baby for a fair period of time and the baby did not seem to be uncomfortable and was not crying. In any event the situation on Christmas Eve escalated, according to Ms. Kehoe, and she left the room. Mr. Ellis, also with the Children's Aid Society, was brought in to see if he could defuse the situation. The Respondents were very, very angry with Ms. Kehoe and the Respondents said to her, and this a quote that the Respondents accept. I believe speaker was Ms. D. who said: "Merry Christmas you fucking bitch". The Respondents access was then suspended until the Executive Director returned from holidays to deal with the issue.

[31] Ms. Kehoe advised that if access had to be cancelled due to bad weather, the Respondents would be angry with her, but she maintains that access was always cancelled for a valid reason and never cancelled by The Children's Aid Society without notice. The witness complained that the Respondents' focus was never on the plan. She stated that communication, while it did not start out to be difficult between

she and the Respondents, became a large and looming problem in this matter. On one occasion, Ms. D. referred to Ms. Kehoe as “a fucking bitch” and Mr. S. referred to David Brown as: “a fucking nazi”. This incident arose when baby, S., came to an access visit without her oxygen. This happened because her pediatrician indicated she no longer needed oxygen. However, the situation escalated when S. arrived without her oxygen.

[32] Ms. Kehoe chronicled the Agency staff trying to give the Respondents updates and that the Respondents were given a written six month schedule of monthly meetings with the Childrens Aid Society staff and that these meetings were to take place after the access. The Respondents believed that they were given a schedule of times to meet with the Agency, in writing, and during access.

[33] No-one provided me with any written material so we have two very different interpretations of whether or not these meetings were set up at an appropriate time. Ms. Kehoe indicated that the Respondents either did not come or got upset during the meetings with the Childrens Aid Society and left. The Respondents were annoyed with Ms. Kehoe when she would not allow them to videotape or record the meetings with Childrens Aid. The witness was accused of not returning phone calls, but she

indicated that she returned every phone call. However, as the case progressed and the communication became more negative, it was the preference of the Respondents, according to Ms. Kehoe, to call the Director or Executive Director and she indicated that, to her knowledge, all of their phone calls were always returned. By March, 2009, verbal communication was no longer possible and communication was then done through the Executive Director by letter only. The witness, Ms. Kehoe, described her relationship with the Respondents as difficult but again indicated that was not how the relationship originally started.

[34] From a transcription of the evidence of Ms. Kehoe on direct examination, page 56:

> Q. Okay. In terms of their level of cooperation with the case plan, what can you say to that?
>
> A. At this point they haven't cooperated with the case plan in terms of the major presenting problem which is the acknowledgment and the acceptance of the responsibility of S.'s injuries. We haven't had any acceptance or acknowledgment there and in terms of the remainder of the case plan with the addiction um, the Parents Together Group. um, and the anger management they have either not completed the services or completed services and didn't let us know and even with the anger management service having been completed the Agency doesn't see any change with Mr. S..
>
> Q. Okay now why is acceptance of responsibility for the injuries to S. so important to the Agency?

> A. At this point there has been no acknowledgment there for, there's no route for the Agency to take to address any type of risk as a result of that.

[35] Recently, approximately the time she was giving evidence, Ms. Kehoe became aware that Mr. S. had completed an Anger Management course and that they had completed a Managing Emotions course at Family Services. From the worker's testimony, she was unaware of the steps the Respondents took until she received Mr. Bryson's second report. The worker became aware of these measures taken by the Respondents in reviewing the assessment where the Respondents had been open with Mr. Bryson as to what services they took or were taking. The witness acknowledged that Ms. D. showed some insight into her problems with Mr. Bryson in his second report. Witness stated these comments made to Mr. Bryson do show some insight but this insight is not maintained in the rest of the report nor has she seen that in her contact with Ms. D. or Mr. S..

[36] Through the Bryson report, the worker realized that Mr. S. had taken Options to Anger, Family Services counselling, Ms. D. had gone to Elizabeth Fry and she was also taking classes on how to be a better parent and the worker confirmed on the cross-examination that were it not for the updated Parental Capacity Assessment she would have been unaware of the remedial services taken by the Respondents until

very recently. She has not seen any behavioural improvement in either of their contact as a result of these courses.

[37] On cross-examination, Ms. Kehoe confirmed the Applicant had only recently become aware of the programs that the Respondents took, apart from Agency programs, but still did not feel that she was fully aware of what these courses were aimed at in relation to what the Agency's concerns were. She obviously felt that the Agency's recommended courses were more remedial than the courses taken by the Respondent, but she didn't explain why she felt that way.

[38] Ms. Kehoe indicated that she never did see the Methadone related correspondence until she was cross-examined in Court on the day she gave evidence and that is the Direction 180 correspondence. The witness maintains that remedial measures are always good, but the basic problem of acknowledgement of injuries remains Also change due to services and counselling has not occurred. The worker, on cross-examination, confirms that Parents Together was in the first case plan and the referral was in Ms. D.'s name but it was contemplated that both parties would take that course as it is designed for parents together.

[39] This witness is consistent throughout her evidence that the injury to the baby is the primary concern. If the worker knew of all the services the Respondents took, she would not alter the final plan for permanent care. The child was in their care and now, after all this time, there is no explanation for why she had four breaks in her legs at approximately two months of age. Ms. Kehoe advised that S. has no medical needs identified now but she has ongoing assessments with her pediatric and para-natal follow up clinic. The foster parents would advise the Childrens Aid if any concerns arose in relation to the child.

[40] The Court next heard from Mr. Bryson who was qualified, by consent, to give opinion evidence in the area of Parental Capacity Assessments. Mr. Bryson reviewed all the tests that he performed for his two reports, the reasons for the tests - what were they aimed at, and the limitations of the tests and how these tests could best be interpreted. I think it is important to remember that all Parental Capacity Assessments are looking at finding remedial measures; so very often the report contains comments that might be hurtful to the parties assessed but basically these reports are designed to look for voids not pluses. I find that Mr. Bryson's reports have positive comments to make in relation to both Respondents. He advised that in preparing a report he does tests, he examines collateral reports, he interviews collateral people and he refers to

research on studies that have similar factual situations. He agrees that for the first report he was missing certain information. He did not indicate that this, in any way, affected the integrity of his report. He had not received L. D.'s screening results from the Methadone Clinic and, in fact, he had received no information from the Methadone Clinic. He had, in the preparation of his first report, not seen the Protection Order of September 10, 2007 and he finished his first Parental Capacity Assessment on February 21, 2008 so that was not material that he had before him.

[41] His collateral interviews did not include Doctor Lynk, who was not interviewed in relation to the parents' concern of S.'s head shape. He did not receive any results from L. D.'s parenting class. In his second report, I note he had additional research but did not interview any collaterals. Again, these comments are made in no way to question the integrity of the report itself.

[42] The first Parental Capacity Assessment was February 21, 2008 (Exhibit #7) and Mr. Bryson concludes at page 61:

> Ms. D. and Mr. S. were co-operative participants in a psychological assessment of parental capacity. They attended all of their scheduled sessions and responded to all questions asked of them. The purpose of the assessment was to make recommendations in the best interests of their daughter, S. D., DOB: March *, 2007. S. is presently in the care of the Children's Aid Society of Cape Breton-Victoria.

The assessment focuses on what Ms. D. and Ms. S. have to offer their daughter, their strengths and weaknesses. S.'s medical status, including her diagnosis and causes of her alleged non-accidental injuries are not addressed. These issues are before the Court and are beyond the scope of the referral. Neither Ms. D. or Mr. S. take responsibility for S.'s injuries. They do not accept that they harmed her, intentionally or unintentionally.

Interview of the foster parents suggests that S. is progressing well. Developmentally, she is reported to be at the eight month stage. Other than crawling and sitting, the foster parents deny that S. has any significant developmental delays. The foster parents denied they have any concerns regarding S..

Observation of Mr. S. and Ms. D. found them to adequately and appropriately care for S.. They were child focussed, aware of possible safety concerns, interacting with her in a gentle and nurturing manner. It was evident that each parent derives much joy from time spent with their daughter. S. was found to be active, energetic, responsive and mobile. This behaviour was consistent with observation of her with her foster parents. She laughed and cried during the home visit. Ms. D. and Mr. S. worked well as a team in providing care. The home is appropriate except for easily rectified factors addressed in the body of the report. There were no concerns resulting from the observation of Ms. D. and Mr. S. with S..

The observation of Ms. D. with S. appears to be consistent with the observations of the IWK Health Centre staff regarding her care of S.. Ms. Prosser writes that Ms. D. is attentive of S., that none of the nursing staff have expressed any concern of her observed interaction with her daughter.

Ms. D. presented as a pleasant, co-operative woman. She seemed concerned about the health of her children, particularly of her two youngest children, S. and S.. Ms. D. appeared genuinely sad when she spoke of S.'s pain, and how massages may have caused her discomfort rather than relief. Her score on the Child Abuse Potential Inventory suggests that she is at low risk of physically abusing children in her care.

> Ms. D. spoke openly about her history of psychoactive substance dependence. It seems she is making good progress in the reduction of her methadone. Ms D. has some awareness that she is unable to utilize opiates safely. Correspondence from Addiction Services, Methadone Program, suggests that Ms. D. is co-operative with treatment. Her psychometric assessment (SASSI-3) indicates a high probability of a substance dependence disorder. In combination with her dramatic personality style, with attention seeking and hedonistic behaviours, Ms. D. should likely refrain from using any drug with an addiction potential, including alcohol.
>
> Mr. S. was also fully co-operative with his participation in the assessment. An intense male, he admits to difficulty managing his anger. Unfortunately, he continues to rationalize his behaviour. His personality assessment (MMPI-2, MCM1-111) indicates a chronic pattern of relating in a confrontational manner. Underlying his anger appears to be difficulties controlling anxiety and possible feelings of powerlessness. To assist him with managing his emotions, he should attend and complete an anger management program. It is important to recognize that Mr. S. is not found to be at high risk of physically abusing children in his care (CPI).

[43] It is not clear why Mr. Bryson's terminology was different in relation to physical abuse of children. He said Ms. D. was a low risk but Mr. S. is not at a high risk and that difference was not examined in evidence.

> Similar to Ms. D., Mr. S. has significant difficulty managing his use of psychoactive substances. The SASSI-3 finds that he has a substance dependence disorder. This is supported by the results of the MCMI-111 and MMPI-2. Additionally, Mr. S.'s alcohol use history and consequences from use (significant legal difficulties) further suggest that abstinence from alcohol, street drugs and any medication with a high addiction potential is advisable. Collateral information from Ms. D.'s mother, Mr. S.'s mother and Ms. D.'s sister, suggests that Ms. D. and

Mr. S. have many parenting strengths, love their children, and are demonstrating appropriate parenting behaviours.

Strengths of Ms. D. and Mr. S. (as identified by the NEO-PI-R) include being eager to co-operate and good natured. Given the stressors of their current situation, they are encouraged to work with these positive attributes.

[44] The recommendations are:

l. It is recommended that Mr. S. attend and complete an Anger Management program.

2. It is recommended that Mr. S. remain abstinent from alcohol, street drugs, and any medication that is not prescribed to him for a period of 24 hours prior to and during any contact with his children.

3. It is recommended that Ms. D. remain abstinent from alcohol, street drugs and any medication that is not prescribed to her for a period of 24 hours prior to and during any contact with her children.

4. It is recommended that Ms. D. and Mr. S. attend supportive counselling, such as that offered by Family Services of Eastern Nova Scotia, to assist them with managing the emotions, concerns and stressors related to their children, involvement of the Applicant, and the on-going Court proceedings.

5. It is recommended that a Children's Needs Assessment of S. be completed to determine if she has any special needs.

6. It is recommended that should the Court find that Ms. D. and Mr. S. are not responsible for any harm caused to the infant child, S. D., that S. be returned to her parent's care pending completion of the above items.

7. It is recommended that Mr. S. attend his family physician for assessment regarding his chronic sleep difficulties.

[45] This is Mr. Bryson's report of February 21, 2008. The updated Assessment is almost as lengthy and contains additional research. One of the tests was not used because, in the interval, it was found that this test may have a gender bias. The written recommendations (Exhibit #8 - March 15, 2009) are:

l. It is recommended that should the court decide to return S. and S. to the care of their parents, Ms. D. and Mr. S., that Mr. S. have demonstrated an ability to maintain abstinence from psychoactive substances such as marijuana.

2. It is recommended that Ms. D. continue with anger management counselling.

3. It is recommended that Ms. D. and Mr. S. continue with supportive family counselling with Mr. Burke of Family Services of Eastern Nova Scotia.

4. It is recommended that Mr. S. complete an addiction assessment through Addiction Services and follow all treatment recommendations.

5. It is recommended that Mr. S. attend Narcotics Anonymous on a weekly basis for a period of at least six months.

6. It is recommended that Ms. D. continue with her addiction treatment through Addiction Services until she and her therapist mutually agree that no other treatment is warranted.

7. It is recommended that Mr. S. abstain from alcohol, street drug use, and any medication that is not prescribed to him.

8. It is recommended that Ms. D. abstain from street drug use, and any medication that is not prescribed to her.

9. It is recommended that Mr. S. attend individual counselling to assist him with developing skills for impulse control.

This is Mr. Bryson's report of the 15th day of March, 2009.

[46] During the **viva voce** evidence, Mr. Bryson advised that during his interviews with the Respondents, both denied any responsibility for S.'s lesions. Ms. D. explained to him that such lesions were common in premature babies. While L. D. accepted no responsibility for these lesions, she expressed concern that her massaging the infant's legs may have caused a re-fracture, which is something raised for the first time during Mr. Bryson's evidence. Ms. D. advised Mr. Bryson that she and Mr. S. did nothing and they were not going to take the blame. Ms. D. confirmed her pregnancy with S. and S. were both planned pregnancies. She also advised him that she and Mr. S. lived in different houses for financial reasons as she was on social assistance. However, she denied to Mr. Bryson that money was an issue or a difficulty for her. Ms. D. wishes to have all three (3) of her children returned to her as she believes that now she can parent as she is no longer taking drugs. Her first child, S., is in the care of her mother and has been for a number of years.

[47] In the second report of Mr. Bryson, March 15, 2009, L. D. told him she completed her methadone program in Halifax on December 29, 2007. This was her verbal report to him. Mr. Bryson believed that she had been discharged from the program, Direction 180, and was weaned off the methodone when she was in Halifax and was discharged from that program. This was her information related to him during the assessment or what he understood from her interview with him.

[48] Ms. D. advised that she smoked marijuana twice during the pregnancy and twice since the pregnancy and at other times, but she did not view it as a problem. Mr. Bryson concluded that the Respondents felt the Agency was unfair to them and that their anger in relation to the Applicant was appropriate. Mr. Bryson concluded Ms. D. did not have a strong level of insight. However, she believes herself to be an adequate parent. Mr. Bryson also stated Ms. D. "also perhaps does not see herself in an accurate light". Mr. Bryson concluded Ms. D. feels intense anger more often than 80% of other people and this anger she can either keep it suppressed or if she expresses it, she expresses it in an aggressive manner.

[49] However a new test was done in the second report (Exhibit #8), the EQI, which tests awareness of emotions and the effect of how these emotions relate to each other.

Ms. D.'s score was high showing she is in touch with her own feelings, she has good stress management, but that she does have problems with impulse control and stress tolerance. I found this result to be somewhat at variance with Mr. Bryson's comments re Ms. D.'s lack of insight unless the distinction is the lack of insight to others but she could still at the same time be in touch with her own feelings.

[50] The second report advised Mr. S. felt persecuted by the Childrens Aid Society. Mr. S. advised that he did not cause the baby's injuries, which he believes, and advised Mr. Bryson were a common development in premature babies. He told Mr. Bryson that he did not believe the injuries could have happened to the baby while the baby was in his care. Mr. Bryson concluded Mr. S., based on the tests, had a strong disbelief of doctors, Community Services and some of the Children's Aid workers. Mr. S. felt certain individuals lied or misrepresented information or had not done as much for him as they could have. More precisely, Children's Aid workers lied about S.'s injuries and the four (4) physicians gave false testimony to the Court. Mr. Bryson was told by Mr. S. that Mr. S. felt out of control as no one would listen to what he had to say. Mr. S. advised Mr. Bryson the Childrens Aid Society refused to meet with him.

[51] Mr. Bryson concluded Mr. S. only gets angry as often as most men his age, but when he does get angry he will yell, shout and scream. This result is typical for men in the twenty-five percentile resulting in issues of impulse control and self awareness.

[52] Mr. S. told Mr. Bryson he does not deal with stress and he ends up "blowing up", but he only looses his temper with Children's Aid and the hospital staff over S.. Mr. Bryson hopes that Mr. S. can use what he has learned in his Anger Management classes, but he feels that Mr. S. is hampered with implementing these new skills due to his impulsivity and lack of insight. Mr. Bryson concluded that after a course in anger management, behaviour such as blowing up at hospital staff or Children's Aid staff should not continue. However, Mr. S. does not believe he has a significant problem with anger, rather he told Mr. Bryson he was going to anger management at the request of Children's Aid in order to have his children returned.

[53] This was hard for the Court to reconcile when he was taking the course to satisfy Children's Aid but not advising them that he was attending. I found this conduct difficult to reconcile; and it was not explored in evidence. Mr. S. advised Mr. Bryson he did benefit from his anger management course but Mr. S. felt his

relationship with Children's Aid will only ever improve if the Agency starts telling the truth.

[54] From the personality testing, Mr. Bryson advised in relation to Mr. S. that at page 41, Exhibit #7:

> Mr. S. may easily be offended by slights and tends to be self-deprecating and unpredictable. Although he is overly self-denying and dysphoric, there is an underlying irritability and discontent that should be handled by drawing upon his strong desire to please others and act in a deferential manner.
>
> -
> He courts undeserved blame and criticism and feels that he is being cheated, misunderstood and unappreciated.

Mr. Bryson goes on to talk about that type of personality trait on page 42 of the report.

In the middle of the first large paragraph he states:

> A struggle may exist between acquiescence and assertion and feelings of resentment and guilt. This may result in a rapid succession of moods. He may complain of being alternately smothered and discarded by others. Typically unstable and erratic, he may become easily nettled, contrary and offended by trifles. A low tolerance for frustration may be present...

[55] Mr. S. advised Mr. Bryson that drinking was not a problem for him and he gave up marijuana on December 31, 2007. S. was apprehended in May, 2007. He advised

Mr. Bryson he knew Children's Aid did not like him using marijuana. He advised as well that he had taken a detox program for 18 days in 2005 but did not benefit from the program. He used to use marijuana to help him sleep and therefore the recommendation of the sleep clinic was made to provide an alternative route. Mr. Bryson believes Mr. S. had other addiction assessment sessions in 2008 but he had no more information on that assessment.

[56] Mr. Bryson explained in oral evidence that the first report (Exhibit #7), recommendation #2 which stated no drugs or alcohol twenty-four hours before a visit, really meant no drugs or alcohol for Mr. S. at all. At that time, Mr. S. had told Mr. Bryson that he was already abstaining, so the focus was shifted to Mr. S. as he interacted with his children.

[57] Mr. S. believes, according to Mr. Bryson, that the Agency is plotting against him. Mr. S. advised his difficulty with anger arises solely when he has to interact with the Agency. The CAPI (Child Abuse) tests in the Bryson report indicate , neither parent would likely be personally responsible for harming a child. This test examines whether or not the parents would hurt the child not whether or not the child was hurt in their care. Mr. Bryson advised this test cannot be examined in isolation.

If it is examined in isolation, the test has no meaning. Mr. Bryson explained as well that there is no psychological test that can be examined in isolation from other tests.

[58] At page 329 of the transcription, the question asked was:

> Q. ...and this is the child abuse potential inventory form the CAPI as I referred to it earlier, where both Mr. S. and Ms. D. when they were tested um, you confirmed in both cases they are in low risk of physically abusing children in their care and I think you indicated to my friend it is a screening tool as opposed to a predictor, would that be accurate?
>
> A. Um...
>
> Q. Because I think the reference you made earlier was while you contemplating was that you would never made a decision based on this test alone?
>
> A. That is correct.
>
> Q. Okay so it's usefulness is limited I take it then?
>
> A. Yes it is, it is not 100% accurate.
>
> Q. It's not a 100% accurate?
>
> A. Yes.
>
> Q. So taking this test alone then what use can you make of it?
>
> A. Of this test alone?
>
> Q. Yes?

A. By itself with nothing else?

Q. Yes?

A. Nothing.

Q. Okay other than they scored low on that particular case?

A. This test alone means nothing.

[59] In his evidence, Mr. Bryson indicates that there is no psychological trait that can be interpreted by one test alone. In relation to concerns regarding Mr. S.'s anger, Mr. Bryson stated that for Mr. S. this is a life long behaviour for him and it most likely won't change after a six week course. However, people who want their children back will be motivated to change. However, such change, such positive change is less likely if the client's do not believe there is a need to change. He confirmed that Mr. S. has a chronic pattern of relating to others in a confrontational manner.

[60] In relation to substances, Mr. Bryson advised that both parents scored high on the probability of substance dependence disorder. Mr. Bryson found Mr. S. did not recognize that substance abuse could jeopardize his family. He believes Mr. S. continues to use marijuana and so Mr. Bryson recommends Addiction Services. Mr. Bryson believes that Mr. S. has a significant history of substance abuse. Mr. Bryson advised that people with problems need motivation in order to change before the

remedial measures for that problem prove to have some benefit. Mr. Bryson also recommends that Ms. D. continue with addiction counselling. He recognizes, to date, that she has attended two sessions close to the time of his preparation of the second report and he believed others sessions are planned for her.

[61] Overall Mr. Bryson found the couple acknowledged they had anger problems, acknowledged they had substance abuse problems and took interventions. L. D. is committed to continue her addiction counselling. The Respondents attended Family Services for counselling and are committed to continue with that counselling. Mr. Bryson found the couple did not need a psychiatric assessment. He concluded they must abstain from drugs completely and Mr. S. must abstain completely from alcohol as well. Mr. Bryson agrees, in relation to Mr. S., that he showed in report #2 (Exhibit #8), which was different on this feature from report #1, in that he did not abstain. In report #1 (Exhibit #7), Mr. S. advised he was abstaining. Report #2, approximately a year later, Mr. S. was not abstaining and this caused Mr. Bryson to be concerned with Mr. S.'s substance abuse and Mr. Bryson found this especially so where it was already an issue with the Agency who had the care of his children.

[62] Mr. Bryson agrees that as of June, 2009, this couple still need a lot of work to be done in terms of improving their parenting ability. He said the couple need time to effect change. Mr. S. must attend Narcotics Anonymous for six months. The couple require treatment for problems outlined; that is, other forms of counselling. The treatment time limits were harder to set down because such would depend on the ongoing success of the counselling techniques.

[63] Mr. Bryson, oddly enough, was not aware of the legislative time lines in the Act when he gave his estimate of change. I am unsure whether he knew that there was a statutory time limit. However, he did give certain outer limits for Narcotics Anonymous in relation to Mr. S..

[64] Mr. Bryson recommends the sleep clinic to look into Mr. S.'s sleep problem, which would make it easier not to use marijuana.

[65] Mr. Bryson felt that S. should be assessed so that her needs can match those of the parents. This is in one of his recommendations in the first report. We note that in the second Parental Capacity Assessment, both of the Respondents felt that S. was doing very well and had become active. On cross-examination, Mr. Bryson advised

he recommended the return of S., #6 recommendation (in Exhibit #7, March, 2007), if the Court found the parents were not responsible for her injuries. He did not deal with that issue.

[66] In relation to the difference between the recommendations in the first report and the second, Mr. Bryson is asked by Mr. Ianetti:

> Q. Okay. So in light of the recommendations and again I think my friend touched on it in terms of your recommendation with respect to Clause No. 6 which says that it is recommended should the court find that Ms. D. and Mr. S. are not responsible for any harm caused S. at least at this stage of the assessment could be returned to the parents pending completion of the other recommendations you made in the assessment?
>
> A. Yes.
>
> Q. Alright, so essentially it was a recommendation to return the child at that point in time?
>
> A. If these were met yes.
>
> Q. Alright, now you don't make that same recommendation in the second report and can you tell me why not?
>
> A. The second report I think my concerns are more now about substance use and I am not certain about the ability of the parents to abstain from the substance abuse in the long term basis.

Q. Okay?

A. Um, there are still concerns I think with the anger and impulsivity um, particularly from Mr. S. and both parents have some difficulty I think with insight, and that's a concern as well.

[67] Mr. Bryson concluded the visits between the Respondents and S. were all positive and appropriate. He also interprets his findings to conclude the parents work nicely as a team together and they work well as co-parents. Further therapies were discussed by Mr. Bryson, such as anger management and couple counselling. Mr. Bryson, as well, discussed research which he endorsed in his second assessment, which provides predictors of future physical abuse and as a result of the contents of the second report, he feels the focus with respect to parenting for the couple now is:

(1) ability to abstain from psychoactive substances;

(2) demonstrate impulse control;

(3) anger management;

(4) use of social supports such as Family Services;

(5) co-operate with the Childrens Aid Society.

[68] If these were met, then he would recommend the return of both of the children on the time lines suggested in his report.

[69] Using an analysis of the predictors of future harm to the child, numerically these factors in the research if added together, there are more positives than negatives in relation to the Respondents. Using these same factors quantatively, Mr. Bryson indicates that the opposite result is reached and he stated: "The risk factors need to be resolved".

[70] At the end of Mr. Bryson's lengthy examination and cross-examination, he concluded:

> Q. Okay. And in that list you gave me, you talked about abstinence from certain drugs, demonstrate impulse control, anger management, use of social supports and services and attending and completing those services and cooperation with the Applicant. You see those as, you said if they were able to demonstrate these things you would recommend the return of the child?
>
> A. Yes.
>
> Q. Okay now to date they have not demonstrated abstinenance correct. Mr. S. has not demonstrated abstinence?
>
> A. At the time I assessed him correct he continued to use marijuana and they both continue to use alcohol.
>
> Q. Okay and they, as far as you are aware are they demonstrating impulse control and anger management?
>
> A. To some degree, I think they have a long way to go yet.

Q. Okay and the use of social supports do you have any new information to say whether they are using social supports?

A. No I don't have any new information.

Q. And whether they are attending and completing the services, you have already spoken to that, as far as you are aware Mr. S. has completed the six week anger management course?

A. Yes.

Q. But all other services are still ongoing correct?

A. Correct.

Q. And in terms of cooperation with the applicant do you have any information to suggest that they are now cooperating with the applicant?

A. Both indicated that they were, that they were no longer confronting the applicant, communicating by letter and their perception was that they were.

Q. Okay. And you only feel the child would be able to be returned if all of those things were demonstrated?

A. Yes.

And that is the completion of Mr. Bryson's evidence and reports.

[71] Ainslie Kehoe, the Worker, was recalled on June 8, 2009 to give new evidence. This is over the objection of Mr. Ianetti. This evidence was offered not to indicate whether or not recent criminal charges had any validity, but to examine the

Respondents reaction to the police. Ms. Kehoe indicated that Mr. S. was arrested on June 1, 2009 and Ms. D. told Ms. Kehoe that Mr. S.'s behaviour was appropriate and to be expected in the circumstances. The arresting officer arrested both of the Respondents by the end of the episode. Apparently the impetus behind this behaviour by the Respondents was that Ms. D.'s sister had been stabbed by a third party hours before the Respondents were arrested.

[72] The Court next heard from Alana Brown, who was called by Mr. Ianetti, and she is a Clinical Therapist for Addiction Services. She was Protection Worker when Ms. D.'s first child was apprehended due to substance abuse by Ms. D. in 2002. The problems were addressed and the child was returned to her and later Ms. D. placed the child with her mother. That placement was not pursuant to Agency involvement. After 2003, Ms. Brown saw Ms. D. by way of a self referral prior to S.'s birth and again a self referral in February, 2009 Ms. Brown has seen positive changes in Ms. D. since 2002 in identifying and dealing with emotions, how to develop ways to cope and an improved physical condition. Ms. Brown believes Ms. D. can now deal with stress without relapsing to substances. She has seen Ms. D. three times in 2009 and another appointment is scheduled. She believes that Ms. D. needs support through therapy with all that she is going through at present. Ms. Brown advised that L. D.

told her she had tapered off to 4 ml. of methadone, but did not return for the last 1 ml. final dose. Ms. Brown confirmed in her role as a therapist that her first session with Ms. D. was prior to October, 2007 and the next follow-up session was February, 2009. As of March, 2009, L. D. has had four sessions in total with another one scheduled.

[73] Ed Burke gave evidence that he saw Mr. S. as a result of a self referral. He stated that the Children's Aid contacted him in July, 2008. There is an intake process and phone calls and phone interview of which he is not a part. He was following what he believed to be the recommendation in Mr. Bryson's first report. He believes that the stressors to the Respondents are due to the involvement with the Childrens Aid Society. First Mr. S. was frustrated and angry for part of the first session, but that didn't last throughout the whole interview. Most people he sees are angry in the first session. He indicates that he saw the couple seven to ten times and believes them to be sincere in their wish to change. He feels that he has earned their trust and he expects to continue to work with the Respondents. The length of the involvement will depend on the outcome of this Court. He prepared a summary report indicating he saw the parties six months after the first Bryson report. Mr. Burke had Mr. Bryson's first set of recommendations. Mr. Burke confirmed that for various reasons, the Respondents missed approximately one-half of the sessions that were scheduled.

Between August, 2008 to March, 2009, there were fourteen (14) scheduled visits of which seven(7) were attended and seven (7) were missed. The Respondents called and provided him with an explanation on most occasions if they were unable to make the session. Mr. Burke advised the Court that he gave the Respondents specific recommendations. I note, however, in the Bryson report, Mr. Bryson quotes Mr. S. as saying "Mr. Burke hears him out" but did not make recommendations.

[74] Next we heard from Mary Joe Church. She is the Director of Family Services, Eastern Nova Scotia and she provided Exhibits #4 and #5. Exhibit #4 is from Family Services of Eastern Nova Scotia. It is the Certificate that Mr. S. received for participating in Options to Anger, which he completed in November, 2008 as well as Exhibit #5, which is a file summary that is always prepared by Family Services if they are required to go to Court. This report chronicles work with Mr. S. and what sessions he attended. I note it was January 6, 2009 when Mr. S. provided a release of information to allow his file to be shared with the Childrens Aid Society.

[75] Ms. Church sees very little difference in the two (2) courses, Options to Anger and Anger Management. I note that the Protection Worker, Keogh, did not share that view and wondered if this course was tailored to Mr. S.'s needs, but there was no

follow-up on that line of questioning. Ms. Church describes the course that she gave as a group, which is taught at a very "introductory" level, but Family Services does have a more intense course that is offered; however that course deals with domestic violence intervention and it is more advanced. The participants have to be assessed before they can join the group. In the Anger program people are taught to respond respectfully when angered and this response precludes any swearing or yelling. In Exhibit #5 Mr. S. tells Ms. Church he does not have a problem with anger according to the summary of events tendered by her.

[76] The Court next heard from Constable Lavin on July 6, 2009. He gave evidence on behalf of the Childrens Aid Society. He is a police officer who investigated the June 1, 2009 incident with the Respondents. Both parties were very vocal to the police and at first Mr. S. swore at the police and he was arrested for damage to property and possibly other charges. Once he was charged, then Ms. D. became very vocal as well and she was also arrested. Matters have not been dealt with in the Court. There only relevance in this examination is that these are the responses to a person in authority after this couple attended anger management.

[77] L. D. gave evidence on July 6, 2009. Her evidence was in opposition to the Plan of the Agency for permanent care. L. D. is seeking the return of her child to her care. She advised she sees her girls three times per week for l l/2 hours each at the Childrens Training Centre. These visits are with both children and are supervised by the Childrens Aid Society, and the Agency provides transportation. She advised her third child, who was born November *, 2007, the child, S., is also involved in a protection proceeding under the **Children and Family Services Act** before a separate Court. S. was born November *, 2007 and S. was born March *, 2007.

[78] Ms. D. advises that she co-operated fully with the Parental Capacity Assessment. She believes she followed the recommendations of the first report. She abstained from drugs and alcohol twenty-four (24) hours prior to access. She states she has ongoing counselling at Family Services. She finds this helpful and feels that her counsellor does not judge her. She believes S. must be assessed for her special needs and is concerned that after two (2) years, the Agency hasn't done this assessment. She did not take Parents Together, as requested by the Children's Aid Society in their amended Plan because the course was in North Sydney and she believed there was a woman who lived nearby who had reported her to the Children's Aid Society so she was not comfortable going to that class. She indicated the Agency

did not make any further referrals so she referred herself to the class of How to be a Better Parent with counsellor, L. Carr. The Children's Aid Society gave evidence that Ms. D. was advised that she could take the course in Sydney. However, she does not seem to confirm that offer in her evidence.

[79] Ms. D. discussed Exhibit #9 which is the course at the Cape Breton Family Place Resource Centre, the name of the course is: You're a Better Parent Than You Think. It is dated March 16, 2009. At that point Ms. D. had attended three out of the ten sessions. Most of the sessions would occur after this letter was written. It appears she was going to the classes in February, 2009 and this letter was written in March, 2009 so what happened to subsequent classes, whether she attended or not, was not made clear to the Court. Ms. D. did make her own self referral to this service. Ms. D. advised that if she missed any appointments in Exhibit #9, it was because she had other appointments or access and she had to attend those as well. She would like to retake the whole program and she intends to do a self referral to retake the program.

[80] Ms. D. next discussed another course she took: Options to Anger for Women, which was Exhibit #10, completed in June, 2009, taught by Angela Sampson of Family Services. This was a self referral as well. It was not a course recommended

by Mr. Bryson in his report or requested by the Children's Aid Society. This was Ms. D.'s self referral, which she attended without Mr. S.. She explained she took this course because the Children's Aid Society would not give her updates on her children. She needed to acquire more emotional strategies and from the course she learned how to avoid conflict. Ms. D. gave evidence on July 6, 2009, and she had already completed this course in June, 2009. I note the incident with the police was in June, 2009.

[81] Ms. D. stated that she got on well when she had the worker, Nicole Stubbert, but she cannot get along with the current worker and she would like that changed. Ms. D. agrees on direct examination that she called Ms. Kehoe a "fucking bitch" and said to her on another occasion: "Merry Christmas fucking bitch" but as of the date that she gave testimony, July 6, 2009, when asked if she regretted that behaviour she indicated she did not. Ms. D. advised she used the language because that was how she felt as the Children's Aid Society had her two (2) children, her Christmas visit was shortened, there was a hanger in the child's jacket that was digging into her baby's neck and the baby had a red mark on her neck. She does not believe that Christmas visit resulted in her over-reacting over the hanger. At the same time, she indicated

that she called Mr. Brown a Nazi, which again she does not currently regret because he, Dave Brown, abuses his power.

[82] Ms. D. advised that the Children's Aid Society refuses to give them any information in relation to their children and so no contact with them is easier on everyone. Ms. D. advised that to work with the Children's Aid Society, she would like a new worker and a new supervisor and then she would be willing to bite her tongue if this means having her children returned to her. In regard to scheduled meetings, L. D. advised that these meetings were always set up by the Children's Aid Society during her access period so she had no option if she attended access.

[83] L. D. did agree that she received disclosure of medical updates but not when she wanted them. The medical updates came as a bundle, but the Children's Aid Society would not allow her to speak to the doctors. She did agree that Ms. Kehoe advised her that Doctor Lynk did not want to talk to her because he didn't want to get in the middle of things. Ms. D. indicated that Doctor Lynk was going to provide her with an updated medical but it was never received.

[84] Her counsel questioned her regarding the methadone clinic and she advised she stopped the clinic when she reached 4 ml. To complete the course she would have to go down to 1 ml., and she would have to go to Halifax to do so. She just went from the 4ml. to 0 on her own and has not used any methadone since. Ms. D. indicates that random drug and alcohol testing was an option in the Plan. She thought it was an option and that she asked the Childrens Aid Society to start it and they said they would and nothing happened.

[85] Ms. D. advised, in Mr. Bryson's second report, that she did complete Anger Management and that she completed couples counselling with Mr. Burke at Family Services. Her Addiction Counsellor, Ms. Brown, feels that she can quit her counselling with her at any time. She has abstained from street drugs totally. No time frame was given re abstinence but I'm assuming she gave up drugs since at least before the last assessment by Mr. Bryson, if not earlier.

[86] Regarding S.'s injuries, Ms. D. agrees that she told Mr. Bryson these breaks were common in premature babies. She confirms that only she, her sister and Mr. S. had the care of the child and she does not believe that any one of them would have hurt S.. On cross-examination she indicates that S. was a planned pregnancy. She

wanted to be clean of street drugs for one year before she conceived, but at the time of conception for both babies, she was in the methadone clinic and used marijuana toward the latter stages of her pregnancy. She believes her dose of methadone was somewhere between 45ml. and 55 ml. when S. was born and 9ml when S. was conceived, and 7ml. when S. was born. Ms. D. left Direction 180 in Halifax when she was down to 4ml. but did not relocate to the Sydney clinic. It was recommend that she wean off to 1ml. and she was able to do that on her own.

[87] Ms. D. feels that the police investigation of she and Mr. S. has absolved her from any wrongdoing in relation to her daughter's broken bones. If S. is returned to her, she and Mr. S. will continue to live in separate houses. She still does smoke cigarettes but will not smoke around the children.

[88] Regarding Christmas access and the hanger incident, Ms. D. advised she was upset but did not swear until the end of the visit. Mr. Bryson quotes her as telling him she did quite well with this situation. She agrees that she told Mr. Bryson that the visit ended in laughter. The worker stated that the visit required an escort and that there was yelling. The worker advised she had to leave the room and another person come in and attempt to defuse the situation. Ms. D. was very annoyed with having

her visit shortened so she called her lawyer and the lawyer told her to take her time so she stayed until 12:30 to have her full visit.

[89] Ms. D. indicated that she swore at the worker due to the hanger in the baby's jacket at the beginning of the visit. She was upset about the hanger, not having her children at Christmas, S.'s head being in a flattened shape and her visit cut short. For all those reasons, she sworn and she agrees that she said to Ms. Kehoe: "Merry Christmas, you fucking bitch". When Ms. D. was asked whether she was told the flattened head was due to prematurity and she got a letter from the treating physician that gave her that reason her response was: "sort of". She agrees that she and B. S. have verbally attacked workers on occasion. Her contact with the medical opinion as to why S.'s head was flattened, she commented during evidence: "I was told that the medical condition was caused by prematurity which is quite ironic considering her legs were not caused by prematurity, but her head was." She agrees that she will only deal with the Agency in writing from this point onward and it has been this way for quite some time. She denies that she has any existing problem with anger. Ms. D. agrees that she really only started services nine months prior to giving evidence this month and S. was placed in care in May, 2007.

[90] The Court heard from B. S. and he advised that the Anger Management course did help him as he was going through a difficult time. He was working and he had a sick baby. This was a very difficult time for him. He said the Children's Aid Society has not been straight forward with him, that they gave false information to Justice Wilson in Court indicating that they kept the Respondents informed. He implies that the Childrens Aid Society did not keep the Respondents informed. He believes the Children's Aid Society set access times only during his work hours. He wanted weekly updates from the Agency and did not get them. He had to go to the medical society to get updates. He stated that the Childrens Aid Society misrepresented the facts to him and he also believes that the doctors lied to the Court, particularly Dr. Katetanowicz. He maintains he never hurt S. and knows of no-one who did and he has no idea what happened to her.

[91] Mr. S. agrees that he did receive medical updates as to why S. had a flattened head. On cross-examination, he acknowledges he received medicals to explain this but is not sure whether or not he accepts the medical explanation because he was not able to have a conversation with the physician. The Children's Aid Executive Director had advised him that all further information was to be in writing and he agrees that this is a step, but he does not agree that this need to write was brought on

by the Respondents' verbal abuse of the workers. Regarding the Christmas hanger incident, Mr. S. said Ms. D. was not aggressive. He believes that the word, aggression, requires a physical act and all Ms. D. did that day was to raise her voice.

[92] Mr. S. advised the Court that he began to wean himself off marijuana a year ago and was weaned off completely by January, 2009. Mr. S. denies he was ever a drug addict, but does admit that he has a dependency on drugs and the course he took on addictions makes this distinction. He makes this distinction as well. Mr. S. said he rarely drinks but he did have a couple of beer on the night he was arrested, June 1, 2009. He denies that alcohol has anything to do with that incident. Mr. S. continues to deny any harm to S. and he believes he does not need any service but the services that he took were helpful and he has had one session with an Addiction counsellor in March, 2009. This was a self referral and he intends to continue through with that referral.

[93] The law that is required to be applied in a case where the Agency is seeking permanent care is found in s. 2, s. 3, s. 42, s. 46, s. 47.

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

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

The factors examined are contained in s. 3(2) of that same Act. I am to consider the best interest test here as well. S. 3(2) provides:

> 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;
>
> (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 of treatment to meet those needs;
>
> (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;
>
> (k) the effect on the child of delay in the disposition of the case;
>
> (l) the risk that the child may suffer ham 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 serv ices;

[94] The Agency shall satisfy, on a balance of probabilities, the requirements of s. 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.

Section 42(4) indicates:

> 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 with 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.

Section 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;

Those are the relevant sections of Section 47 in considering placement for S..

[95] The onus is on the Agency throughout on a balance of probabilities to show that S. cannot be cared for in her parents' care, that she won't be safe in her parent's care. This has been a very difficult and long road, as both lawyers have outlined. The difficulty that I have is that I am dealing with two reasonably intelligent, articulate, nice looking people. Mr. S. likes to work. They had S., Mr. S.'s first baby, and Ms. D.'s second baby with four (4) broken bones and both of them said: 'I didn't do it', 'she didn't do it' and 'my sister didn't do it', but we have unrefuted medical evidence that the child was in their care when this happened so they have to be able to explain the injury, was it a babysitter who broke S.'s bone? Did a caregiver have one marijuana toke too much or maybe that was the night either parent drank too much and the baby was crying. It's their responsibility to come up with an answer and they have not done so. Mr. Ianetti says not getting along with the Agency isn't a reason that the Court should keep the child from them and it is not. He is right. A lot of people don't get along with the Agency because even at their least intrusive, they can

be most intrusive because they are taking someone's child from them. You couldn't be more intrusive than that and it's terribly difficult to consider taking a child possibly forever, but the Act is also preventative. These Respondents have used their considerable energies in continuing to confront, not just the workers, the hospital staff, the police officer just last month, that's how they deal with anger. The psychological assessment, as their own lawyer states, has positive features in it. However, the opinion evidence and Exibit #8, the Parental Capacity Assessment, stated they are impulsive, they lack insight, they both have aggression problems If one doesn't admit one has these problems, there is no motivation to change.

[96] I find, on a balance of probabilities as follows:

S. suffered a non-accidental injury while in the care of the Respondents; The Respondents will not or cannot offer any explanation that I could accept. The Respondents still have not realized that they have to offer an explanation. That is not even touched upon. It is a concern they do not appear to accept the serious injuries or that it is their responsibility to explain the cause of the injuries. Their energies were spent being combative with the Agency and with others. They indicate they got along well with Nicole Stubbert,(an earlier protection worker), but the referral she made, they didn't follow through. When the first Plan was issued on December 1, 2007, S.,

was only nine months old. They had only to follow through with that Plan. It proposed the return of S. to their care upon specific terms.

[97] As I indicated, their energies have been spent being combative and angry with the Applicant and others. They appear to be hard done by. Mr. S. has used the word, "persecuted". They are not accepting of correction. Mr. Ianetti hammered home in his summations, no matter what services the Respondent took, these weren't going to make any difference to the worker. I believe the worker even answered him to the effect services were not going to make any difference. I think they are both wrong there, because maybe one of these services would have turned on a light bulb or hit the right chord. Somebody knows what happened to this baby. I still don't know, but the onus, when the parents have the care of the child, is on the parents to tell me what happened. It's the law. But maybe one of those services could make it possible for one parent to come clean as to a reasonable cause. But responsible parents, if they didn't break the baby's legs, they would be looking under every stone, rock and tree to find out who did; not fighting with other people. They would use their considerable energies to find out what went on. Bring in a doctor to say Doctor Isles is wrong, do something. Even with the evidence of four (4) professionals who didn't know these

people, even with the x-ray specialist's opinion, who only saw one line, she only saw one x-ray, she didn't know any more and didn't want to know, the Respondents remained in denial. How do we get past it and we have to get past it. The Act is preventative. I acknowledge that the Bryson report says they are unlikely to harm children in their care in the future. I'm acknowledging that but I have to deal with the four (4) broken bones in an infant. I have to deal with that and it's never been dealt with, by way of explanation.

[98] If I took the broken bones out of the equation as I found with the apnea, I took that out of the equation. If I could take it, if I could say these didn't exist, we still have the Bryson report that say there is substance abuse and aggression problems, impulsivity and lack of insight. These Respondents need a lot of work before their parenting abilities will reach the level where this little one would be safe. So when they read the reports (Parental Capacity Assessments), I would strongly recommend that they take it to heart and examine it because those broken bones have a legacy if left the way they are right now.

[99] The Respondents are denying any responsibility, they find, even the day they gave evidence, they found their anger at the Childrens Aid Society, and their anger at

the police was appropriate. They have a perception of themselves that is unlikely to change in the foreseeable future. They don't accept services and when they go to services that they find on their own, they are reluctant to tell the Applicant. Even the information release for Mr. S. was signed in January, 2009, when Court was to start a permanent care hearing in March, 2009. S. has been in care since May, 2007. Was this a game or a contest with the Applicant? There remains weighty concerns in relation to the conduct of the parents. Their focus was entirely misdirected and this is so, so unfortunate. Communication was reduced to letters so if so reduced , why didn't they write the Agency as to the services they want. We were certainly in Court often enough. I would have ordered any services the Respondents wanted that were reasonable.

[100] I did notice when Mr. S. gave evidence he presented as a very finely tuned gentleman. He was interrupting, he was, I wouldn't say aggressive, but certainly, certainly did not seem to be in control in his manner of presenting evidence.

[101] In any event, I find the least intrusive avenues have been tried and failed or have been refused and the services that they have taken so far are incomplete, even according to the Bryson conclusion. It is important to note he does not look at the

issue of S.'s broken bones. The services taken by the Respondents would be inadequate to protect S.. They have not learned from their anger management. They are angry at the police on the 1st of June, 2009, in the middle of this hearing. They are in the middle of this hearing when they get angry at the police. That is not how you deal with things and that is not how you want to show a child how to deal with things. If their tempers are that quick, then we have to wonder as to what would happen when a child becomes older and children can then really become a struggle. The Respondents have been given many opportunities for change. I find even with the extended time provided, they have not changed. I find that it is unlikely they can change in the foreseeable future. In any event, it is in S.'s best interests that she be placed in permanent care and be placed for adoption.

[102] I find all of the requirements of the **Children and Family Services Act** have been met. Now we are left, two (2) years later, without any answer as to what happened to S..

[103] Due to the confrontational nature of the Respondents, I am not providing a weaning off period for them to say good bye to the child. If I could have an assurance that they would be appropriate, I would, but that hasn't been the way it's been for the

last two years. So there will be no further access. The child will be placed for adoption.

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M. Clare MacLellan
J.