

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

Citation: Children's Aid Society of Cape Breton-Victoria v. A.L.,  
2009 NSSC 328

**Date:** 20090923

**Docket:** SFSNCFSA60627 & SFSNCFSA56925

**Registry:** Sydney, Nova Scotia

**Between:**

Children's Aid Society of Cape Breton-Victoria

Applicant

v.

A.L. & J.W.M.

Respondent

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DECISION

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**Editorial Notice**

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

**Judge:** The Honourable Justice Darryl W. Wilson

**Heard:** September 14<sup>th</sup> and 15<sup>th</sup>, 2009

**Decision (orally):** September 23, 2009

**Decision (written):** November 5, 2009

**Counsel:** David Raniseth - Counsel for the Applicant  
Luke Wintermans - Counsel for the Respondent, A.L.  
Alfred Dinaut - Counsel for the Respondent, J.W.M.,

The Court:

[1] This proceeding concerns the future care and custody of two children. The older child, H., age 4, is the son of A.L., the Respondent mother, and J.M., the Respondent father. Protection proceedings were initiated by the Children's Aid Society of Cape Breton-Victoria, the Agency, in January, 2008.

[2] The younger child, N., was born in September, 2008 and protection proceedings were initiated at the time of his birth. Although the mother asserts that J.M. is N.'s father, J.M. doubts that he is N.'s father.

[3] The Agency's application seeks a Permanent Care and Custody Order with no provision for access for each of the children. The Agency's plan for H. is permanent placement through adoption with paternal grandparents. The Agency's plan for N. is permanent placement through adoption with non-relatives.

[4] The Respondents ended their relationship in the Spring of 2008 and no longer communicate with one another. The mother opposes the application and seeks an Order returning both children to her care. The father did not present a plan of care. He supports the Agency's application for Permanent Care and Custody Orders with no provision for access, which will enable both children to be placed for adoption.

[5] Although both children are in the temporary care and custody of the Agency, H. has been residing with his paternal grandparents since November, 2007, and N. has been residing in an Agency approved foster home since his birth in September, 2008.

[6] The protection risks identified by the Agency when the proceedings began was substance abuse by both Respondents and domestic violence. The main protection concern of the Agency at the time of trial was domestic violence in the mother's personal relationships.

[7] The maximum time-limits for Disposition Orders pursuant to the **Act** with respect to the child, H., have expired and the Court must either place the child in the permanent care and custody of the Agency or dismiss the proceedings and return the child to the care of the mother.

[8] The maximum time-limits for Disposition Orders with respect to the child, N., do not expire until April, 2010. The Agency's position is that the circumstances justifying a Permanent Care and Custody Order are unlikely to change by April, 2010 so that the child can be returned to his mother and, therefore, a Permanent Care and Custody Order should issue at this time.

### **BACKGROUND**

[9] The child, H., was born in the Spring of 2005 while the Respondents were living together. Both Respondents had children from other relationships, who were residing with their other parent. The Respondents' relationship was marked by domestic violence and substance abuse. The

father was incarcerated in 2007 in the \* Correctional Facility. During the period of this incarceration, the Child Welfare Agency in the Antigonish area investigated child protection concerns involving the mother. Court proceedings were not initiated.

[10] After the father's release from custody in the Fall of 2007, the Respondents relocated to \* looking for work. Shortly after their relocation, H. was apprehended due to substance abuse by the Respondents. The paternal grandparents, who reside in Cape Breton, travelled to \* to assist the Respondents. An agreement was reached to place the child in the supervised care of the paternal grandparents and the entire family including grandparents, Respondents and child returned to Cape Breton in November, 2007. The Children's Aid Society of Cape Breton-Victoria became involved with the family to provide courtesy supervision for the \* Agency. The mother was residing with the paternal grandparents and the child in the grandparents' small trailer in Cape Breton when the \* Agency

ended their protection proceedings because the child had been relocated to Cape Breton.

[11] The local agency initiated protection proceedings in January, 2008 because of continuing concerns involving substance abuse by both parents and domestic violence. The mother was admitted to Detox on two or three occasions in January and February, 2008, due to continued substance abuse, including taking an overdose of the drug seroquel, an anti-depressant, on one occasion. The mother's substance abuse involved primarily prescription medication for pain caused by a back injury. Despite domestic violence concerns, the Respondents continued to have contact with one another.

[12] Although H. was placed in the temporary care and custody of the Agency, he continued to reside with his paternal grandparents. The Respondents, who were putting forth a common plan for the return of their child, were offered remedial services. The mother was to be H.'s primary

caregiver. In March, 2008, the mother was informed by the paternal grandparents that she was no longer welcomed to stay at their home. The Respondents maintained separate residences. A no-contact provision was included in the protection orders, while services were being accessed. The Respondents continued to see one another. According to the father, they would stay together on occasion. He believed they were still in a relationship. Each initiated contact with the other. He would pick her up and drop her off at Transition House when she was residing there and also at the Agency's offices when she attended for access visits.

[13] The Respondents' relationship ended in the Spring of 2008 when the father was incarcerated on assault charges. They have not resumed their relationship. The mother has been participating in services to address her substance abuse, including attendance at Detox in February or March, 2008, addiction counselling, providing hair samples for analysis and participation in the Methadone Maintenance Program. At the time of trial in September, 2009, she had made significant progress in addressing these

past addiction concerns. Services to address domestic violence concerns included residing at Transition House, participating in programs offered by the staff of Transition House, Clifford House and contact with Victims' Services and the Domestic Violence Unit of the Regional Police. The mother also attended parenting programs including a "Parents Together" support group.

[14] In the Spring/Summer of 2008, the mother informed the Agency of her pregnancy, which was considered high risk due to her substance abuse. The child, N., who was born in September, 2008, experienced difficulties because of the mother's substance abuse. He was apprehended at birth and was placed in an agency-approved foster home. He is being seen by a doctor and physiotherapist for delays in his motor skills development.

[15] After N.'s birth, the Agency became aware that the mother was involved in a new domestic relationship with another individual, P.M. The Agency did not know much about P.M. In January, 2009, the Agency



became aware of a reported domestic violence incident between the mother and P.M., which had occurred in December, 2008. At that time, P.M. was charged with mischief by throwing a rock at the windshield of the mother's car and threatening to burn her vehicle. He was placed on an Undertaking not to have contact with the mother. He complained that he had been assaulted by the mother. The day following this incident, P.M. was arrested again for breach of an Undertaking not to have contact with the mother. Also, the mother was charged with an assault on P.M., which was alleged to have occurred the day before. The status of this charge is unclear.

[16] The Agency requested that P.M. attend remedial services, including the Second Chance Program to address domestic violence issues and Addiction Services, if the mother was going to have a relationship with him, while parenting her children.

[17] In April, 2009, the Agency acknowledged the progress made by the mother with her addictions and the steps being taken to address domestic

violence concerns. The Agency was in favour of returning the children to the mother's care. The risk factors of domestic violence and substance abuse were still a concern. The Agency wanted a period of supervision in order to ensure the mother refrained from the abuse of substances and remained in a violent free relationship. Access between mother and children was moved to the mother's residence. A pre-condition to moving the place of access was that P.M. not be present in the home until the Agency received information from his service providers. However, on at least one occasion, P.M. was present during the mother's access with her children, contrary to court orders that provided there was to be no contact between them.

[18] In April, 2009, the mother informed the Agency that she had been in a car accident which resulted in injuries including a black eye. There was no police report of a car accident as alleged by the mother. The Agency questioned her about the accident and the mother reported the driver of the vehicle had consumed alcohol.

[19] On May 6, 2009, the mother was violently assaulted by P.M. The mother was at the residence of P.M.'s brother. Alcohol was being consumed and an argument ensued. P.M. threw the mother over the back steps. Her injuries included a lump on the back of the head, a red and swollen face, bruises on her hand, arms and the kidney area of her back. When the police arrived, she was upset, crying and afraid of P.M.

[20] The police officer who investigated the May 6, 2009 incident stated the mother told her that P.M. had assaulted her on four occasions from December, 2008 until May, 2009. Each physical altercation resulted in bruises and marks. The officer said the mother told her that the injuries she reported caused by a car accident in April were actually suffered as a result of an assault by P.M. The injuries at that time included a swollen right eye, bruises on her back, knee and arm. The mother did not report the April assault because she was afraid it would hurt her chances of having her children returned to her care.

[21] P.M. was arrested, charged with assault and placed on an Undertaking with conditions, including not having any contact with the mother. P.M. tried to contact the mother from the correctional centre the day after the incident. She reported this incident to the police.

[22] The Agency held another risk conference in May, 2009, which recommended the children remain in temporary care and custody rather than the supervised care of the mother, because the mother was repeating a pattern of engaging in personal relationships with violent men, which created a substantial risk of physical harm for the children.

[23] The protection proceedings were stayed in June, 2009, for a period of three (3) months and mediation ordered to assist the parties in reaching a resolution in the best interests of the children. The paternal grandparents who had been caring for the child, H., since the Fall of 2007, were elderly and uncertain whether they wished the child placed with them pursuant to

an adoption, which was the Agency's Plan. The grandparents were not able to put forward a plan of care for the child, N. Mediation was not successful. The grandparents now support the Agency's plan to permanently place the child, H., with them by adoption.

[24] In June, 2009, the mother obtained full-time employment with a call centre in \*. She was relocating her residence from the \* area to \* in August, 2009. The Agency is aware that she is residing in \*, but did not visit her residence in \* and are not sure of its' suitability.

[25] In August, 2009, the Agency received a police report that P.M. was seen in a motor vehicle being driven by the mother. The police were aware P.M. was on an Undertaking not to have any contact with the mother. They pursued the vehicle until it stopped at a service station in Bras d'Or. The police observed P.M. exiting the vehicle, and entering the service station. When P.M. exited the service station, he ran from the police when confronted by them. According to Cst. Myler, he was within ten (10) feet of

P.M. when he exited the vehicle. He also stated the mother acknowledged P.M. was with her. The officer testified the mother informed him P.M. was with her because she needed help moving furniture to a new residence.

P.M. was charged with a breach of the Undertaking. He is awaiting trial on these charges. The mother did not have a valid drivers' license at the time.

[26] The mother testified it was P.M.'s son who was with her on that day and not P.M. The mother testified she has ended her relationship with P.M. and has reported an attempt by him to contact her after the May incident.

P.M.'s son testified that it was he himself and not his father who was with the mother on that day. He was contacted by the mother in order to return some items she had that belonged to his father and he agreed to help her move furniture to her new residence. He said he ran from police because he owed money on outstanding fines from prior offences.

[27] The mother agrees that the paternal grandparents are providing good care for the child, H., at this time. However, the mother is concerned about

the availability and the ability of the grandparents to parent H. in the future because of their age, which she estimates to be over 65. She is also concerned that they have allowed contact between the father and H., even though the father (their son) has not accessed the services requested of him by the Agency. The mother believes the father is seeing the child in the grandparents' resident, contrary to the existing court orders. The Agency has spoken to the grandparents and the father about this concern, which has been denied by them. The father said that he attends his parents' residence only when the child is not there.

[28] The Agency referred the mother for personal counselling services with Family Services of Eastern Nova Scotia on June 25, 2009. The mother did not attend the initial counselling interview scheduled for August 20, 2009, because she had obtained full-time employment, and was accessing personal counselling services through her addiction counsellor.

[29] The mother has attended access visits regularly with both children. Initially, access was with H. alone. After the birth of N., access was with both children. However, some visits had to be scheduled between the mother and H. alone in order to meet H.'s need for attention from his mother. The Agency has no concerns about the mother's ability to parent the children if placed in her care or her ability to meet the medical needs of the child, N. The mother has an 18 year old son who resided with her during the 2008/09 school year, while he was completing his high school education. He is not residing with her at this time. The mother has two (2) daughters from another relationship, who reside with their father but visit her on weekends. The mother experienced a great deal of financial difficulty during the past year and relied upon P.M. to assist her in meeting her basic needs.

### **AGENCY'S POSITION**

[30] The objective of the Agency's intervention was to provide services to alleviate the conditions which placed the children in need of protective



services. Substance abuse and domestic violence were the factors which placed the children at substantial risk of physical harm.

[31] It is the Agency's position that, although the mother has made gains in addressing her substance addictions, she has made little or no progress in addressing the issue of domestic violence. The Agency refers the Court to evidence detailing the extent of serious domestic violence in her relationship with P.M., her failure to keep the Agency informed about domestic violence events, her failure to comply with conditions set out in court orders not to have contact with the father or P.M., her attempts to mislead the Agency about injuries caused by domestic violence and ongoing contact with P.M. despite the threat he poses to her safety.

[32] It is the position of the Agency that the children's need for safety and security are paramount, the domestic violence factors which led to children to be in need of protective services continue to exist, the services that have been implemented to alleviate the risk have failed and the circumstances

giving rise to the risk are unlikely to change within a reasonable foreseeable time-frame based on the ages of the children.

[33] The Agency requests Orders for Permanent Care and Custody so the children may be placed for adoption as soon as possible.

### **THE MOTHER'S POSITION**

[34] It is the position of the mother that she has not been given an opportunity to parent her younger son, N., and to resume the parenting of H. She has taken remedial services to reduce the protection risks that were present when these proceedings began. She will continue to address substance abuse issues by following her Methadone Maintenance Program and attending sessions with her Addiction Services' Counsellor, Pauline Saunders, who also provides personal counselling. She experienced difficult financial circumstances in the past year which led to her making poor choices in continuing a relationship with P.M., who was providing financial assistance to her while her son, age 18, resided with her. She did

not have any contact with P.M. since the May incident contrary to the evidence of the police officer. She made significant progress in her personal life by addressing her addiction concerns, obtaining full-time employment and moving to a new apartment. She is prepared to care for her children, subject to the supervision of the Agency, which can monitor her ability to provide a safe and secure environment for her children for an additional six (6) months. The Agency will be able to supervise her care of her oldest child, H., indirectly through a Supervision Order with respect to her younger child, N.

[35] The following sections of the Children and Family Services Act are relevant in this application:

***Review of Order***

**45(4) Before making an order pursuant to subsection (5), the court shall consider**

**(a) whether the circumstances have changed since the previous disposition order was made;**

**(b) whether the plan for the child's care that the court applied in its decision is being carried out;**

**(c) what is the least intrusive alternative that is in the child's best interests; and**

**(d) whether the requirements of subsection (6) have been met.**

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

**(a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order;**

**(b) order that the disposition order terminate on a specified future date; or**

**(c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 43 for supervision orders and in Section 45 for orders for temporary care and custody.**

**(6) Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 46.**

...

***Disposition order***

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

- (a) have been attempted and have failed;**
- (b) have been refused by the parent or guardian; or**
- (c) would be inadequate to protect the child.**

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

**(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 42.**

...

***Services to promote integrity of family***

**13(2) Services to promote the integrity of the family include, but are not limited to, services provided by the agency or provided by others with the assistance of the agency for the following purposes:**

- (a) improving the family's financial situation;**
- (b) improving the family's housing situation;**
- (c) improving parenting skills;**

- (d) improving child-care and child-rearing capabilities;**
- (e) improving homemaking skills;**
- (f) counselling and assessment;**
- (g) drug or alcohol treatment and rehabilitation;**
- (h) child care;**
- (l) mediation of disputes;**
- (j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;**
- (k) such matters prescribed by the regulations. 1990, c. 5, s. 13.**

...

***Purpose and paramount consideration***

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

...

***Interpretation***

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

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

**(c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;**

**(d) the bonding that exists between the child and the child's parent or guardian;**

**(e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;**

**(f) the child's physical, mental and emotional level of development;**

**(g) the child's cultural, racial and linguistic heritage;**

**(h) the religious faith, if any, in which the child is being raised;**

**(i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;**

**(j) the child's views and wishes, if they can be reasonably ascertained;**

**(k) the effect on the child of delay in the disposition of the case;**

**(l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;**

**(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;**

**(n) any other relevant circumstances.**

## **CONCLUSION**

[36] I have considered the evidence as a whole, including the evidence of witnesses who testified on behalf of the parties and the exhibits filed. I have considered the preamble to the Children and Family Services Act and the relevant statutory provisions.

[37] The Court is required to make an Order in the best interests of each child, taking into account all the relevant circumstances, including the factors set out in Section 3(3) of the Act.

[38] With respect to the younger child, N., the Court must consider whether the circumstances have changed since the previous Disposition Order, whether the plan for the child's care that the Court applied on a prior decision is being carried out, what is the least intrusive alternative that is in the child's best interest and whether circumstances justifying the earlier Temporary Care Order are unlikely to change within a reasonable



foreseeable time not to exceed the month of April, 2010, so that the child can be returned to the mother's care.

[39] Because the Agency is seeking a Permanent Care and Custody Order, the Court must also consider whether it was possible to place the child with the relative, neighbour or other member of his community and whether services to promote the integrity of the family have been attempted and failed.

[40] Since the time-limit for all Disposition Orders with respect to the child, H., have expired, the Court must either dismiss the proceedings and return the child to his mother, or place H. in the permanent care and custody of the Agency. In doing so, the Court must consider whether services to promote the integrity of the family, pursuant to Section 13, have failed, whether it is possible to place H. with a relative and whether the Court is satisfied the circumstances justifying the earlier Protection Orders have not changed sufficiently so that N. can be returned to his mother.

[41] In considering what Order is in the child's best interest, I find:

(1) The child, H., has a close bond with his mother and needed to spend time alone with her during access visits. The mother is capable of establishing a close bond with N., if he is placed in her care. The mother has satisfied the Court that she wants to be a parent to her children.

(2) The mother is capable of meeting her children's physical, mental and emotional needs.

(3) The mother's plan emphasizes both children being part of one family unit, whereas the Agency's plan would result in the separation of the siblings, and one child not having an opportunity to develop a relationship with relatives.

(4) The degree of risk of justifying the findings that the children were in need of protective services has been reduced because of the mother's success in dealing with her past substance abuse and her willingness to continue with addiction services, such as participating in the Methadone Maintenance Program and attendance at meetings with her addiction counsellor. The children are not at risk of physical harm by the mother.

(5) The mother must do better in dealing with domestic violence concerns. The Court agrees with the Agency that domestic violence concerns evidenced by the mother's association with P.M., her attempts to mislead the Agency and her failure to follow court orders require continued intervention in order to ensure the safety of the children. If true, the mother's association with P.M. on August 1<sup>st</sup> is disturbing in light of their past history. The evidence on this point is conflictual and the Court is not prepared to find that the Agency has

established on a balance of probabilities this association. The mother is not currently residing with anyone who poses a risk to the children.

(6) The delay in disposition of the case should have a minimal negative impact on the children since the mother has made significant progress with one protection concern and approximately six (6) months remain for the mother to address, in a more substantial way, the other protection concern of domestic violence. The older child, H., while not subject to a Protection Order, would receive the benefits of Agency supervision of the mother's care of N. during these next six months. Presumably, the grandparents will be available to care for H. in the future, if necessary, since they were committed to adopting him at the present time. An additional period of supervision would allow the opportunity for the children to develop positive relationships with the mother and a secure place as a member of a family unit.

(7) The substantial risk of physical harm can be adequately addressed with appropriate conditions in a Supervision Order at this time.

[42] In the opinion of the Court, the least intrusive alternative that can protect the children from harm, protect the integrity of the family unit, and assure the best interests of the children, at this time, is a Supervision Order.

[43] In conclusion, the Court finds that services pursuant to Section 13 have not failed to the point where a Permanent Care and Custody Order should be granted to the Agency; the Court is not satisfied that the circumstances justifying a Permanent Care and Custody Order are unlikely to change by April, 2010, so that the child, N., can be returned to the care of a parent, and the least intrusive alternative that is in N.'s best interest is a Supervision Order.

[44] It is in the child, N.'s, best interest that he be returned to the care of his mother, subject to the supervision of the Agency with the following conditions:

- (1) The mother shall absolutely refrain from the consumption of alcohol, from the use of illegal drugs and from the abuse of legal drugs;
- (2) The mother shall continue attending counselling sessions at Addiction Services and shall continue to participate in the Methadone Maintenance Program;
- (3) The mother shall continue to participate in services related to domestic violence education and remain in a violent free relationship;
- (4) The mother shall consistently attend all scheduled appointments and remain in regular contact with her caseworker and other involved

professionals, providing essential information in a timely fashion and follow through with all reasonable requests, inquiries, directions recommendations of involved professionals;

(5) The father shall have supervised access with the child, N., as is arranged from time-to-time by the Children's Aid Society of Cape Breton-Victoria;

(6) The mother shall not have any contact, direct or indirect, with P.M. and should there be any attempted contact by P.M. with the mother, she shall immediately report that attempted contact to the Children's Aid Society of Cape Breton-Victoria;

(7) Any representative of the Children's Aid Society of Cape Breton-Victoria has the right to enter the residence of the child, N., to provide guidance and assistance and to ascertain that the child is being properly cared for;

(8) In the event of non-compliance by the mother, with any of the terms and conditions of this Order, the Children's Aid Society of Cape Breton-Victoria shall be entitled to take the child, N., into care and bring the matter before this Honourable Court, pursuant to Section 43(3) of the **Children and Family Services Act**.

[45] The Court determines it is in the child, H.'s, best interest to dismiss the proceedings against him.

[46] The parties are to arrange for a Disposition Review Hearing within the next three (3) months.

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J.