

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

**Citation:** Children's Aid Society of Inverness/Richmond v. J.M.K. ,  
2010 NSSC 216

**Date:** 20100607

**Docket:** SFPACFSA-060546

**Registry:** Port Hawkesbury

**Between:**

Children's Aid Society of Inverness/Richmond

Applicant

v.

J.M.K. and C.D.C.

Respondents

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

Section 94(1) provides:

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

**Editorial Notice**

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

**Judge:** The Honourable Justice Moira C. Legere Sers

**Heard:** May 19, 20 and 21, 2010

**Counsel:** Lindsay McDonald, for the Children's Aid Society of  
Inverness/Richmond  
Tracey Sturmy, for J.M.K.  
P. Gregory MacIsaac, for C.D.C.

**By the Court:**

[1] These proceedings began by applications dated September 10<sup>th</sup> and December 23, 2008. First disposition occurred on March 23, 2009 for the two oldest children and on June 15, 2009 for the youngest child. This is the final disposition decision.

[2] This matter concerns three children: D., date of birth August \*, 2006; C., date of birth January \*, 2008; and N., date of birth December \*, 2008, born after the proceedings commenced.

[3] Prior to the commencement of these proceedings the parents were being followed by Family and Children's Services of S. This Ontario agency reported their concerns regarding these parents to the S., Nova Scotia agency on October 26, 2007. The Ontario agency issued a Canada Wide Alert to look for the respondent mother and child D.

[4] The local agency received the referral on January 9, 2008. They visited with the mother on January 14, 2008. The applicant agency made contact after the mother moved from S. to B. and then to Port Hawkesbury. The mother confirms that she went to visit her sister in S. and subsequently, her mother in B. and then moved to the Port Hawkesbury area to settle and in her words "to detoxify and become drug free."

[5] The information conveyed from the Ontario agency to the P. agency is contained in the Protection Application affidavit marked as 'Exhibit 14'.

[6] The Ontario agency advised the Nova Scotia agency there were significant child welfare concerns regarding these parents. They were unable to gain the parents' cooperation and were about to commence an application in Ontario when the mother left the jurisdiction. They believed the mother fled (according to the mother - moved) to Nova Scotia.

[7] The father could not leave Ontario because of probation conditions. At the time the father was completing a six-week rehabilitation program with the Native Horizon's Treatment Centre residential program in Ontario. He entered the centre on January 13, 2008, and graduated on February 22, 2008.

[8] The Ontario agency had historical information regarding the mother's drug use and was aware of the domestic violence between the parents. They believed the

parents were involved in criminal theft sprees, credit card theft and breaking into cars. They alleged, and the mother confirmed, that she was an intravenous drug user, her drugs of choice were marijuana, percocet and oxycotin.

[9] The mother was pregnant with her second child. There had been no prenatal care. She had been using drugs throughout the pregnancy. (The mother admits she has used drugs throughout the three pregnancies.)

[10] On a visit to her home, the Ontario agency workers noted there was little food. They provided food vouchers for the child. They had ongoing referrals about fighting and drug use between the parents. The parents were not cooperative with the random testing.

[11] An assault charge against the mother arose out of an incident where the father called the police to calm down the mother. The mother subsequently has acknowledged she had a temper resulting in verbal escalation and there have been mutual abusive episodes between herself and the father.

### **Voluntary Services**

[12] The Nova Scotia agency opened their file on January 9, 2008.

[13] The agency also received a referral from the father in Ontario alleging the mother was bipolar and addicted to oxycotin. He was afraid the baby would be born addicted.

[14] The father testified in this proceeding that this referral was a ploy to force child protection to track down the mother so he could reunite with her.

[15] The Nova Scotia agency conducted a series of visits with the mother. She informed them she had not used drugs since October of 2007. She admitted her previous intravenous oxycotin use and acknowledged that sometimes she had food for her child but not for herself.

[16] She acknowledged being on probation for an assault against the father in Ontario. She alleged there had been mutual violence between her and the father on occasion; he had thrown her against the dresser, grabbed her by the hair and forced her to the floor. Their child was present for this altercation.

[17] The agency continued home visits. The public health nurse attended the mother's home after the birth of the baby on January 22, 2008, offering the Healthy Beginnings program. The mother only commenced participation in this program in May of 2008.

[18] The mother connected with Addictions Services and continued with a counselor on a regular basis.

[19] The agency made a direct referral to the transition home to help establish contact with the mother and to offer services to her. They provided information to her about a regional resource centre. The mother started counseling with a local counselor and advised that she had quit drugs. The agency was prohibited by the mother from talking to the mother's probation officer.

[20] Throughout these visits, the agency observed that the mother's interactions with the children were appropriate. She appeared willing to cooperate with supportive services and appeared to be appropriately responsive with the children.

[21] The father left Ontario and arrived in Nova Scotia to live with the mother. The Ontario Probation Service advised the Nova Scotia agency that the father was not to have contact with the mother other than through a third party and only for the purposes of visitation. They were advised this order remained in effect. The mother was dismayed that the agency might prohibit their reunification as she intended to live with the father.

[22] The agency kept in contact with the mother's addictions counselor and was advised by her addictions counselor on February 29, 2008, that she felt positive about the mother's ability to stop using drugs by herself. The addictions counselor was supportive and positive about the mother's participation.

[23] On a voluntary basis the agency offered an in-home support services agreement to the mother and, ultimately, to the father.

[24] The parents were required to cooperate with random drug testing and continue with their addictions and individual counseling.

[25] By March 10, 2008, the mother became angry with the worker on a follow-up visit and gave the agency a short period of time to complete their work.

[26] The agency visits continued. Upon the father's arrival, he agreed to sign the in-home support services and to attend individual counseling provided by the agency through Mr. G. Neufeld. He agreed to random drug testing. At the time the mother was continuing with her addictions counselor for April, May and June of 2008 and with her individual counselor.

[27] The toxicology reports came in throughout May, 2008, indicating that the parents were using cannabis on numerous occasions and were under the influence during a case conference with third-party service providers on June 10, 2008. This was despite their acknowledgment that they were not involved in drugs and the agency requirement that they completely abstain from the use of drugs.

[28] At this case conference, with their service providers, the parents were informed of the requirement they abstain from all drugs. They were informed that the concern of the therapist and in particular, the agency, was that the reinstatement of soft drug use would lead to criminal associations and a relapse into a previous drug history.

[29] Subsequently, the parents began to miss drug testing. On September 3, 2008, the father's tests showed positive for cocaine use. The parents began to indicate that they would not cooperate with drug testing and they began to miss individual counseling sessions.

### **Formal Protection Involvement by way of Application**

[30] **On September 10, 2008**, the agency commenced a protection application asking for a supervision order to ensure the children were protected, to restrict the parents' mobility, to limit transience, to enforce abstinence of drug and mandate participation in counseling services.

[31] Both parents were participating in Healthy Beginnings. The children presented as well.

[32] As of October 28, 2008, the mother had not made further contact with her individual counselor. However, the addictions counselor indicated that there was a good relationship and periodic contacts with the mother. The father's therapist

recommended, and the agency made available, the services of a First Nations addictions/substance use program. On September 24 the father agreed to engage with this service.

[33] In spite of the random drug testing results indicating that the couple were continuing to use cannabinoids, the agency decided they would continue to support the children in the home with the provision of services.

[34] However, in December of 2008, the agency apprehended the children because of the ongoing parental substance abuse. While the agency received two clean toxicology reports, subsequently they would find out the parents were using percocets on a regular basis.

[35] The concern was heightened when the father broke his hand and was prescribed percocet oxycodone for pain. While the mother advised the agency on October 21, 2008, she used two of the respondent's percocet pills, subsequent testimony suggests that their use was more substantial. The agency intervened directly with the father's doctor who subsequently prescribed a nonaddictive pain medication. The percocets were removed from the home.

[36] On October 27, 2008, the doctor confirmed to the agency that the father returned to him requesting percocets again. He prescribed a low dose percocet over a several week period to address the father's pain.

[37] At the same time in December, 2008, the mother was scheduled to enter hospital to have their third child. In addition, the mother's toxicology results showed the use of codeine and morphine. She denied drug use except for Tylenol for back pain. The agency met with her obstetrician and was advised that she had requested directly from the obstetrician Effexor, a nonaddictive antidepressant, to help her with sleeping.

[38] The agency was satisfied that the children were continuing to be seen by themselves and by public health. They encouraged the respondents to comply with available services, insisting on zero tolerance for drug use.

[39] In the December 1<sup>st</sup> affidavit, the agency was recommending the children remain with the parents. They relied on the self report of the mother that both were abstaining from the use of drugs.

## **Apprehension**

[40] On December 15, 2008, the agency apprehended the children when they became aware that the parents continued consistently and regularly to use illegal drugs.

[41] On Tuesday, December 2, 2008, they were informed by the mother that six guys had been banging on their door early in the morning and had threatened to damage property. The mother informed the agency that the father wanted to purchase a hand gun for protection. The evidence does not disclose that a hand gun was subsequently purchased.

[42] The agency received toxicology reports for November 8, 12, 13, 17, 19 and 20, all positive for cannaboids.

[43] The agency confronted the mother. She denied use. They consulted with the Director of Clinical Chemistry Department of Capitol Health District Authority who advised that the sequence of results was inconsistent and that it was likely that the mother continued to use drugs.

[44] The mother entered hospital and had her third child, N., on December \*, 2008. That child was taken into care by subsequent application dated December 29, 2008.

[45] The parties were agreeable to enter detoxification and rehabilitation programs with a plan to work toward reunification of all three children with their parents, conditional on complete abstinence. The agency supported this plan.

[46] By order dated January 27, 2009, the agency was granted the discretion, subject to strict compliance with the order, including abstinence and successful completion of the residential substance abuse program, to transition the young child from agency custody to the mother's custody under agency supervision on terms and conditions.

[47] The children were provided with supervised access to the parents while they engaged in these residential drug programs. Access with the children continued to be positive and that the parents interacted well and appropriately.

[48] The matter was reviewed on March 6, 2009. The parents were cooperating with random drug testing. The father entered a detox program at the Strait Richmond Hospital from February 10 to February 17, 2009, and a First Nations drug and alcohol program on February 23, with an expected completion date of March 6, 2009. The mother entered the Recovery House program on February 15, 2009, with the projected completion date on March 13, 2009.

[49] On **March 23, 2009**, First Disposition occurred for the two oldest children, and the Protection Finding Order for the youngest child. The plan of care dated March 6, 2009, outlined the terms and conditions under which the agency could transition the children back into the care of the parents moving from a temporary care order to a supervision order.

[50] In March, the matter was further reviewed, clearly with the intention that the parents continue to access the extensive services provided and continue to connect with their children. Access was positive and both parents and children continued to interact well.

[51] The agency sought an early return to parental custody to minimize the disruption and separation experienced by the three young children. The agency noted that there were other stressors affecting these parents, including limited financial resources, limited employment prospects and a lack of a support network of family or friends in the community. The parents were at home with three children under the age of three and the respondent mother had a fourth pregnancy terminated.

[52] At a consent First Disposition appearance respecting the youngest child, the Court was informed that the agency returned the youngest child to the parent's care on March 23, 2009.

[53] The return of the children to the parents on March 23, 2009, was prefaced on clean drug testing and self reports based on follow through with substance abuse programming. The respondents insisted that they were abstaining from drugs..

[54] This return was short lived. On June 5, 2009, the agency re-apprehended the infant along with the two elder brothers on the basis of the belief that the children were at substantial risk of harm



[55] The father had not engaged in individual addiction services counseling, missed the April appointment and failed to reschedule. He did not show up and had a late cancellation in May. He continued with his counselor who echoed the agency's concerns that the parents keep in touch with their service providers in order to address the problems to prevent a spiral out of control. The mother had not followed through with individual counseling adequately.

[56] On April 20, 2009, the respondents missed a urine sample collection.

[57] On May 6, 2009, the parents refused to give urine specimens. The mother was not continuing with the Healthy Beginnings program.

[58] The agency continued to provide support. They offered a budgeting and money management services from Family Support. The mother refused to participate. The mother was beginning to express her feelings that she was overwhelmed, particularly when the father was not in the home.

[59] The mother advised the agency on May 14, 2009, that she did not want to continue with the parent skills program.

[60] By May 28, 2009, the mother had missed her scheduled appointment with her individual counselor. The father confirmed he had not yet met his addictions counselor.

[61] On May 29, 2009, the mother confirmed that she would not work with the Home Services program. The father was not open to another person coming into the home.

[62] On June 3, 2009, the agency was informed by the RCMP that a domestic violence incident occurred between the parents. The police had been called to the parents home on May 27, 2009. The mother alleged that the father had thrown a peanut butter jar at her, grabbed her by the throat and had been pushing her around. Both parties were charged with assault and placed on a no-contact order, the terms of which the parents were attempting to have varied.

[63] All three children were at home during the domestic violence incident. Police faxed a referral to the agency regarding the incident dated May 27, 2009.

[64] On June 3, 2009, the agency visited the respondents home and found both parents together, present with all three children. They were advised that the father returned to the home Sunday, May 31, 2009.

[65] On June 5, 2009, the agency visited the mother. She advised them that she could not sleep and was living off energy drinks. She was crying and cursing such that the agency became concerned for her emotional well-being.

[66] The agency was concerned about the children's safety over the weekend. They discussed their concern about her emotional well-being, returned to the home and asked the mother to take the children to \* for the weekend where she could have some assistance since the father was not allowed to be in the home.

[67] The agency contacted the transition home and obtained assurance from them that the mother could go. The mother refused and indicated she wanted the father back into the home despite the no-contact clause.

[68] The mother refused to go to the transition home with the children. The agency came to her home. She refused them entrance.

[69] The mother contacted her lawyer in an emotional state. The police allowed him to enter her home. The agency asked her lawyer to speak to the mother about a safe alternative plan for the weekend.

[70] While the mother was occupied with her lawyer, one of the children came to the window of the main floor of the split level home. There was no screen on the window; the child had his head and arms out of the window. The agency moved toward the child and encouraged him to move back inside the home.

[71] The police, the agency and the father were all outside the property with the mother and her lawyer inside. Her lawyer encouraged the father to encourage the mother to go to \*.

[72] Observing the mother's state, the agency then informed the mother that the transition home was no longer a viable option. The mother ran out of the home, leaving the children within the home where they were apprehended by the agency.

[73] Two of the children were in the living room area with a 17-year-old babysitter and the middle child was crying from downstairs in the lower level. The fridge had only two baby bottles of milk and two items on the main shelf.

[74] The worker observed in the lower level of the house all three bedrooms with an entrance way strewn with discarded clothing and no clear floor space. The basement area smelled strongly of fecal matter.

[75] The police brought the crying child up to the main level. His diaper was soaked through with loose fecal matter which got into the arms of the officer and workers handling him. On returning with the middle child to the agency, they bathed the baby and found that in addition to the loose fecal matter, he had caked, hard, dried fecal matter stuck to his bottom and his penis was covered with fecal matter. The worker found it difficult to remove the hard, dried fecal matter off the child.

[76] The two oldest children were returned to the foster parents known to them and they were seen to display great excitement on their arrival and were familiar with the other foster boy in the home. Both children were not distressed at being replaced in their foster home. The youngest child was put back in the foster home in which she had been placed previously and settled with no problems.

[77] By July 8, 2009, the agency terminated random drug testing as a result of three missed consecutive specimen collections. The parents had been producing toxicology results which indicate the presence of opiates, both codeine and morphine and benzodiazepines.

[78] On July 31, 2009, the parents disclosed to the agency that although they had indicated that they were clean, they had been using percocets **since October of 2008**. They were aware that it was not being detected or identified in drug testing. They testified in this final hearing they had made observation about the day and time of collection and planned when to smoke and take percocets in order to avoid detection.

[79] The agency discovered through the toxicologist that they had stopped testing for percocets after some negative testing and as a result, the parents were able from October 28, 2008, to July of 2009, to continue with their abuse of this prescription medication.

[80] As a result of their ongoing drug abuse, the Parental Capacity Assessment could not take place in August of 2009.

[81] The respondents informed the agency that they were 'doing' every day. Their percocet use went undetected. They advised they would have 10 pills in their system and the most percocets they would take were 15 to 16 daily, mostly by sniffing.

[82] The mother confirmed that she had used marijuana while she was pregnant with the oldest child, oxycotin while pregnant with the second child, and percocets and marijuana while pregnant with the third child.

[83] They confirmed they had misled the agency in October of 2008. They had consumed the entire prescription of percocets, had to buy more off the street to fill the prescription bottle, which they then returned to the worker. The information was communicated directly to the agency in August, 2009, although the parents' in-court testimony indicated that they had only to buy two pills off the street to replace those they had consumed.

[84] The parent began to be unreliable in attending for counseling. They failed to be available for the introductory visit from the agency family skills worker aimed at assisting them by giving parenting education and skills. When this was reinstated by the agency, they failed to make their first appointment. The father failed to follow up with his drug addictions counselor; although the mother continued with hers.

[85] The parents wished to enter a methadone program. The father's counselor identified the programs available, the parents made the necessary connections and endured the frustration of many refusals to finally be admitted to the New Brunswick methadone program.

[86] Notwithstanding the difficult history, the agency informed the respondents that while the children would not be returned to their care immediately, they would be given an opportunity to enter a methadone program.

[87] The agency committed to offer individual therapeutic counseling and family skills services, as well as supervised access. The agency clearly set out its expectations of the conditions and terms upon which the services would be continued to be offered.

[88] On September 8, 2009, the respondents commenced a methadone maintenance program delivered out of the clinic in \*, New Brunswick. The parents were recognized by the agency for the efforts they made obtaining admission and assisted them with transportation.

[89] The parents consistently attended the methadone program and, if necessary, slept in a bus depot to avoid the costs of an overnight stay in New Brunswick. The agency did not compensate them in advance and the parents did not have sufficient funds to obtain hotel accommodations subject to reimbursement.

[90] At this point, the family physician, the agency and the mother's addiction counselor were all prepared to assist the mother and the father in order to sustain their involvement in the methadone program and they have continued to attend.

[91] The parents attended the addictions clinic on October 13 and 23 and November 13. They had apparently arranged the drive to \* with the maternal grandmother and when the mother advised that the maternal grandmother refused to provide the transportation, the agent for the Minister drove the respondents to and from that appointment at the \* and met with the addictions counselor.

[92] By November 27, 2009, the agency's concerns were heightened. The legislative time lines for the first two children were March 23, 2010, and for the youngest child, June 15, 2010. The youngest child had spent much of her first year of life in a foster home. The youngest child began to look at her foster mother as a mother and her mother as a favorite aunt.

[93] The mother knew where the two oldest children were residing and contacted the foster parents by phone on November 13 and 16, 2009. This concerned the agency and is a considerable breach of protocol with respect to the integrity of the foster home. It is made a more serious concern due to the facts and circumstances contained in the recent supervised access hearing.

[94] The mother's addictions counselor outlined for the court that the goal of the methadone program is to abstain from other opiates and not necessarily to abstain from other drugs including alcohol and/or cannabis. The addictions counselor's perception as to the success of the parents rests on the notion that they abstain from other opiates and not other soft drugs.

[95] The perspective of the agency, known to the parents, is that they abstain from any other non-prescription and illegal drugs.

[96] The addictions counselor has consistently given the mother her strong support at all stages of the proceeding. She relied on the mother's self report. The counselor has 20 years' history with this service. She had no knowledge of and could not determine by observation of the mother that the mother and father had been ingesting and using percocets on a regular basis. The mother had not been honest with the addictions counselor.

[97] The agency developed a plan that would attempt to bolster the parents in a multi faceted fashion. One of these was the provision of family support services in the late summer of 2009. The parents were not available for the introductory meeting between them and the family support worker on July 31, 2009. The agency rescheduled and they failed to show up for the session on August 12, 2009.

[98] The parents advised the worker in their August 27, 2009, session that they felt their drug use did not impair their ability to respond appropriately to their children and in fact increased their awareness. They showed no insight into the reason for the apprehension. They rescheduled the September 10, 2009, session, confirmed on September 22, 2009, that they did not understand that their drug use impaired their judgment and again on September 22, 2009, reaffirmed that they had not used percocets over the previous two weeks. They then failed to show for their October 5 and 20, 2009, sessions.

[99] By September, 2009, the mother had attended one of four scheduled sessions for her independent therapist. She attended all three October sessions and presented as more engaged.

[100] At this point, the father requested couples' counseling. The agency refused, given that the father's therapist had previously agreed to a request from the respondents for couples' counseling, scheduled an appointment and neither showed for the session.

[101] On Wednesday, November 18, 2009, the agency decided it was not reasonably foreseeable that the respondents would be able to make the necessary changes to allow the children to be returned to their care without conditions. The agency amended their

Plan of Care on November 27, 2009, recommending an order placing the children in the permanent care of the agency with a view to adoption.

[102] The respondents asked to have the Parental Capacity Assessment recommence. Although the agency objected to the delay, the Court ordered the agency to inquire about the possibility of a psychological assessment within the earliest possible time frame.

### **Parental Capacity Assessment**

[103] The original referral for assessment occurred in July, 2008. Ms. Rule was scheduled to begin the assessment process in August of 2009.

[104] On August 6, 2009, by letter to the agency, the assessor withdrew from the assessment having learned that the mother and father disclosed to their individual therapists their continuing drug use since October of 2008. The mother wanted the assessment to begin in August, 2009. She advised that they "wouldn't be using anything that day."

[105] The father had advised Ms. Rule:

We do and we don't use. I'm an addict and my drug of choice is pain meds. I'm not a full blown addict, but if I have money, it's the first thing I think of. I was in rehab and detox two times in the past year and my body and brain won't let me stay away from it.

[106] Due to the effect the use of drugs could have on the data acquired and the corresponding effect it might have on the validity of the conclusions, Ms. Rule refused to conduct the assessment at that time. She was prepared to commence once the parties had been abstinent from drugs for three months.

[107] A second referral was made on December 16, 2009, to recommence the assessment process and by February 9, 2010, the assessor indicated reluctance, given the ongoing use of marijuana.

[108] By court order, the Parental Capacity Assessment proceeded at the urgency of the parents, given the fast approaching final time lines and the absence of a Parental

Capacity Assessment and their belief that such an assessment would support the return of the children to their care.

[109] The assessment was scheduled to recommence on February 15, 2010. The assessor had learned that hair follicle testing was done on January 24, 2010, with a six-week anticipated delay for the results. Understanding that the parties were admitting to actively using marijuana "occasionally", the assessor suggested it would be appropriate to proceed with the Parental Capacity Assessment on that date.

[110] Pursuant to s. 45 of the *Children and Family Services Act*, final disposition for the two oldest children should have occurred by March 23, 2010.

[111] The Court ordered the Parental Capacity Assessment be completed. The originally scheduled final disposition was adjourned to May 18 to 21, 2010, to facilitate the assessment.

### **Assessment Results**

[112] The assessment report is dated April 15, 2010. It is 107 pages and contains the results of various psychological testing, self reporting, and clinical analysis.

[113] The recommendations are as follows:

1. It is recommended that D., C., and N. be provided with protective permanent care of the Agency;
2. It is recommended that a plan for adoption be initiated with the children. Every effort should be made to place them as a sibling group;
3. It is recommended that no access be provided to the J.M.K. and C.D.C.;
4. It is recommended that a goodbye visit be arranged if it is deemed appropriate by the agency and only with careful planning. J.M.K. and C.D.C. must ensure that they will behave appropriately in this visit and not create any undue stress for the children. They should be encouraged to provide the children with a goodbye gift and perhaps a short letter with appropriate content explaining why they cannot provide parenting to the children that may be read to them later should their adoptive parents wish to do so. If the agency is not convinced that this visit will be beneficial to the children, it should not be conducted;



5. It is recommended that J.M.K. and C.D.C. be followed by their individual therapists to process any grief that may result from a decision for permanent care of the children;

6. It is recommended that J.M.K. and C.D.C. continue to make attempts to improve their current status including becoming abstinent from substances, seeking psychotherapy to ameliorate earlier difficulties and continue to participate in educational opportunities in order to improve their current functioning.

[114] Ms. Rule has been qualified in this court and other courts in Nova Scotia on numerous occasions as an expert in the preparation of Parental Capacity Assessments. She has extensive experience preparing these assessments. She was involved in Drug Dependency Services between the years of 1989 and 1995. Counsel accepted her as an expert qualified to give expert evidence with respect to parental capacity assessments and the influence of drugs on parental capacity.

### **The Mother**

[115] In conducting the assessment on the mother, the assessor noted that she presented as a young woman with appropriate personal grooming, clean and neat. The assessor had no difficulty with her competency and ability to successfully complete the assessment. She found her consistently cooperative with "frequent episodes of verbal aggression toward external sources other than the assessor." She noted no indication of the potential harm to others during the clinical interview or throughout the assessment process. The assessor was not intimidated by the mother's behavior. She noted no physical or intellectual impairments. She noted "no disturbance in thought content and perception."

[116] Her testing results were not significant and likely valid. The mother was frank, open and forthright. Her overall thinking and reasoning abilities exceed those of approximately 63% of adults her age, placing her in the average range of cognitive functioning, in the average range of verbal reasoning abilities, in the high average range of nonverbal reasoning abilities.

[117] The assessor noted "some impairment in the mother's social judgment", and " . . . some difficulty problem solving and making appropriate and responsible

decisions". The mother's "intellectual and emotional insight was impaired regarding the current circumstances . . .".

[118] The mother related to the assessor a significantly traumatic childhood having borne the brunt of significant and multiple forms of abuse.

[119] The mother has completed grade 11 and needs two courses to complete grade 12. She has little employment history. Her criminal history is not significant. In her early years, she was convicted of disturbing the peace, was on probation and incurred some minor breaches. At 20 years old, she was convicted of domestic assault against the respondent. She has a conviction for credit card fraud. She self-reported that the criminal activity ceased when her oldest child was two years old (approximately 2004). She is currently facing shoplifting charges.

[120] Evidence regarding the shoplifting charges was lead both on the interim access hearing and the final disposition hearing. It was produced to illustrate the parents' current behavior in light of behavior noted by the Ontario Child Welfare system. It illustrates that historical child protection concerns have not been addressed. Evidence was led by the agency through Ms. Rule and Mr. Neufeld that this behavior is closely associated with addiction behavior.

[121] The charges in and of themselves are not the significant issue. Most significant is her substance abuse history starting at age 13 ½. Her use includes abuse of prescription medication and alcohol; using her first illegal drugs at 14 - marijuana, minimal use of mushrooms, ecstasy, cocaine, crack at 19, painkillers, including oxycodone, which she sniffed for about 13 months then began to shoot up. This occurred while at least the two oldest children were in her custody.

[122] The mother maintained she had a period of abstinence from pills for about nine months, leaving Ontario in October, 2007, when she came to Nova Scotia. They say they were both clean when the father followed her to Nova Scotia in 2008.

[123] The parents began smoking weed again and in **October 2006**, started sniffing percocets to give her energy. She was using about ten pills per day while the children were with her.

[124] The urine tests in April, 2008, did not show anything but cannabis, a drug they used regularly. In December, 2008, when the children were taken from them, the

parents were injecting percocets. The children were returned to them by the Court on March 23, 2009, at a time when they professed being clean. They continued to do the percocets undetected.

[125] The mother confirmed that when the children were returned to their care they were high. The percocets did not show up in the urine tests; however the oxycodone did. It was at that point that the children were re-apprehended.

[126] The mother acknowledged that it was difficult to buy the percocets from the street at \$3.00 a piece because they did not have much money. She admits she continued to use the percocets and understood that the agency did not know.

[127] They self-reported to Children's Aid in July or August. They continued to do the percocets until October 11, 2009, at which point they were accepted into the methadone treatment program.

[128] Because the mother felt anxious on the methadone program for the first couple of weeks, she used marijuana until January 1, 2010. She acknowledges she has a drug problem:

The assessor queried what affects she felt her drug use has had on her children, she responded: "... I was probably not parenting well, but my kids had a routine, had everything they needed; their life was not like their life. They have sensed it. One time D. was crying at the gate, like he knew we were not coming out the same person".

[129] The assessor queried J.M.K. what would she do if she did not have the children returned to her care, she responded: "I think the prognosis is good. If we do not get the kids back, we will have a goodbye visit, leave here, and then work on having another baby."

### **The Father**

[130] The father presented himself to the assessor as cooperative and friendly, although somewhat guarded. She found no apparent impairment of thought process. He appeared to be of average cognitive ability. She concluded his intellectual and emotional insight was impaired throughout the assessment process. The assessor felt

that he was frank and forthright and the test results are probably valid. He scored in the average range of cognitive function, average range of verbal reasoning ability that is measured by verbal IQ, average range in non verbal reasoning abilities.

[131] The father's background is not as traumatic as the mother's. He had a positive maternal role model. His birth father left him at two years of age and died when he was 15. He alleges there were historic addiction problems with his father and stepfather. The assessment report details the family of origin difficulties.

[132] The father listed a number of temporary short-term jobs, significantly impacted and terminated because of his drug abuse, among other factors.

[133] I have considered his criminal history as set out in the assessment. He is currently on probation until June of 2011.

[134] His substance abuse history commenced at age 15. In relation to smoking, he says: "It calms me down and there is nothing really wrong with it". He reported abuse of prescription medication:

I started two months after D. was born in 2006 for something to do. I started with percocet and then oxycodine. I was using a couple per day in the beginning. The most I used was about 20 a day. I would sniff percocets and I would sniff and shoot oxycodine. The last time I used was October 11, 2009.

[135] He acknowledged he went to Native Horizons in Ontario. He was in detox three times and rehab twice and has self detoxified countless times.

[136] When asked what would stop him from using it, he responded: "I got a reality check when I lost the kids the second time because they have been gone for so long and I don't want to be without them . . . I would probably use them again if kids were not around."

[137] He has used alcohol and ecstasy and acknowledges problems when he drinks alcohol. He has gotten into fights, kicked out of bars and obviously, most recently, he is charged and waiting trial on the assault with a knife against the mother of his children. He acknowledges he rarely drinks. He confirms he has also, in the past,

tried hash, mushrooms, pcp, crack, cocaine, oxycodine, and benzodiazepine. His preference is weed.

[138] Prior to October, 2009, he used drugs as often as he could get them, every day if possible. He admits:

We tricked Family and Child Services. We knew we were not getting caught, so we could still get the kids back and use pills. We had quit using weed but were getting away with the pills, so we kept using. We were high in court when we got the kids back.

[139] He acknowledges he is physically, psychologically and emotionally addicted.

[140] During the course of this proceeding he was prescribed percocets because his hand was broken. He specifically asked the doctor for percocets instead of Tylenol 3 because he had to use.

[141] He and the respondent mother have been together for five years. They remain together as a couple, promising to separate should the Court return the children to the mother on condition that he vacate the home.

[142] He described the incident with respect to the mother's conviction for assaulting him as follows:

J. was charged for assaulting me. I tried to have the charges dropped but could not. She jumped on my back and hit me on the head a couple of times; it was nothing really, and the neighbors called the cops. I elbowed her in the face and pushed her when she blew away my drugs, I was high.

[143] He acknowledges that in order for things to get better for him and his family, he has to change his lifestyle.

[144] The assessor evaluated both the mother and the father by use of the DSM- IV-TR which includes her diagnostic impressions in accordance with the diagnostic and statistical Manual of Mental Disorders, a standard classification of mental disorders used by mental health professionals, by clinicians and researchers.

[145] In summary, she has diagnosed the mother with poly substance dependence, parent/child and partner relational problems. She questioned whether the mother suffers from post-traumatic stress disorder as a result of the extensive traumatic early history. She diagnosed her with antisocial personality disorder. She concludes the mother has serious difficulty with social, occupational or school functioning.

[146] With respect to the father, she queries a generalized anxiety disorder, diagnosed a poly substance dependence, relational problems with parent/child and with partner. She diagnosis an antisocial personality disorder. She concludes that the father has serious difficulty in social, occupational or school functioning.

[147] She concluded that in terms of the family unit, the relational unit is clearly and seriously dysfunctional.

### **Interim Access Hearing**

[148] An Interim Emergency Hearing occurred on April 20, 2010, as a result of the agency's termination of access between the parents and children. By decision dated April 27, 2010, the Court ordered continuation of access between the mother and the three children pending final disposition and suspended access between the children and the father.

[149] This decision is intended to incorporate but not repeat the contents of the April 27, 2010, decision with respect to the reasons for the termination of access and the Court's reinstatement of access between the mother and children pending final disposition.

### **Summary of Access Hearing**

[150] On March 5, 2010, the agency received confirmation from the RCMP that the respondents had been caught stealing from a local grocery store on February 26, 2010, and had been charged with theft.

[151] On March 15, 2010, the agency received a police referral indicating that the police had responded to a domestic incident involving the respondents at 11:00 p.m. on Friday, March 12, 2010. The respondent father had held a knife to the respondent mother's throat. He locked himself in the home for a period of time.

[152] He was subsequently arrested and jailed over the weekend and awaits trial on an assault with a weapon charge.

[153] Both parties were intoxicated, having purchased alcohol. Both respondents admit that they could not find marijuana. As an alternate drug, the mother convinced the father to purchase alcohol believing, she testified, that it would be less damaging than the marijuana.

[154] As a result of the incident, the mother had to remove herself to \* and the father returned to their residence.

[155] The mother cancelled their scheduled visit with the children for March 15, 2010, in order to attend the bail hearing to ensure that she and the father would still be able to attend the methadone program in New Brunswick and have access together.

[156] The agency was notified of this incident not by the respondents but by the police. The Agency cancelled the March 17, 2010, visit.

[157] The circumstances of this incident, the termination of access and the reinstatement of the access to the mother on a limited basis under strict security provisions pending the final disposition, is contained in the emergency access hearing decided by decision dated April 27, 2010 [2010 NSSC 171].

[158] It is of note that the mother said to the worker during the course of the discussions about access that the Children's Aid should have taken their kids nine months ago when they knew they were smoking weed. She advised that the domestic violence incident happened only because they had been using alcohol and that although they are not alcoholics, when they drink things like this always happen.

[159] The mother in the access hearing and both parents in the disposition hearing acknowledged they were drinking alcohol on Friday, March 12, 2010. The mother spoke to the circumstances of the assault. The father testified he could not remember the details. The mother acknowledges in the Final Disposition hearing that it was possible that the father could kill her.

### **The Parents' Counselors**

[160] The parents' involvement with their counselors is chronicled herein in the same manner as the agency's involvement. This evolving snapshot of the parents' lives within the proceedings illustrates the hope and expectation all parties had at the commencement that these issues could be resolved. The history reflects a difficult beginning, some progress and the downward spiral.

### **The Father's Counselor**

[161] The father's counselor, Gary Neufeld, is well recognized as a clinical therapist providing services on a private basis since 1991. The Court is familiar with his expertise as he has been qualified as an expert in psychotherapy before.

[162] In his reports contained in exhibit 11, he acknowledges that the father has been open about his past history of drug issues and volatile nature of his relationship with his partner while 'using'.

[163] Mr. Neufeld suggested that the therapists and those involved with the file meet in order to prevent the problems, including ongoing drug use, from escalating (January 7, 2008).

[164] At that meeting, the message was clearly delivered to the parents from all service providers that given the nature of the past drug abuse, abstinence was critical. They acknowledged that living with an opiate addiction requires people to live without drugs rather than rationalize the use of soft drugs.

[165] Mr. Neufeld had an opportunity at that meeting to see the parents with the children and acknowledged that they were very clearly nurturing and responsive to their children.

[166] Mr. Neufeld identifies the missed sessions, as well as those attended, and confirms that when that father went back to Ontario to attend his mother's wedding, they were aware that this locale is strongly associated with the father's addiction, requiring him to keep distance from his former lifestyle in order to assist him.

[167] By September 11, 2008, Mr. Neufeld acknowledged that there was one session cancelled for the month of August, one session attended. He was aware that there were several failed urine screens. He acknowledged the difference between what the parents have indicated is their goal,( i.e., to refrain from opiates as opposed to soft



drug use) and the condition regarding soft drug use as agency-imposed, not necessarily imposed by the addiction counselors.

[168] In the October , 2008, report, the therapist noted the father attended one out of three sessions. Mr. Neufeld recommended the father be provided with a First Nations community resource. He noted his approval that the agency located such a resource for the father.

[169] In the November , 2008, report, the therapist noted one out of two sessions was attended. At that point the prescription for opiate medication for pain management was discussed.

[170] In December ,2008, the therapist noted that one out of two November sessions was attended by the father. Mr. Neufeld reported that the use of the prescribed medication had not been resolved. His client continued to take this medication although he acknowledged that his client did not attempt to minimize this.

[171] In January, 2009, the therapist noted that there appeared to be some sort of breakthrough. At some level the father began to address his accountability for his addictions.

[172] In February, 2009, the father entered a detoxification program and missed one of his appointments but attended the second. The therapist confirmed that he was pleased with the progress made by the father addressing his accountability.

[173] The father attended one of two sessions during the month of March 2009. With the reintroduction of the children into the family, he noted that things continued to be somewhat better and they were able to go back to therapeutic work.

[174] Of the three sessions scheduled for July, the father attended one. At that meeting the parents disclosed their ongoing abuse of percocets. The counselor was of the opinion that the father was not able to refrain from opiate use and should enter the methadone program; contacted the family doctor and attempted to get in touch with several methadone clinics in the province.

[175] Throughout the months of September, October and November, there was some indication in the reporting from Mr. Neufeld that there was improvements and encouraging signs. The father enrolled in school to complete his GED, worked out

at a local gym, obtained corrective lenses and looked forward to positive involvement in the community.

[176] The December report continued to be positive. At this session, the counselor attempted to address, with the father, the criminality issue in relation to his addiction.

[177] During the February session, the counselor addressed the need to change his social network. The father relocated his residence in order to remove himself and the mother from their historic group of friends.

[178] The upswing that was occurring took an abrupt turn in March of 2010, at which time the counselor noted that things began to go quite poorly for the father during the preceding several weeks. He described the downward spiral as being triggered after the parents were charged with shoplifting and subsequently with the assault charges and the incident that occurred between the parents after drinking alcohol.

[179] The counselor became significantly concerned about suicidality "and the potential for harm to others and property that is escalating in intensity over time." He was unable to get in touch with the client and he was concerned about the safety of the agent, property of the agency and his clients own suicidal ideation.

[180] He met with his client and dealt with these issues and his significant concerns about his client's mental state, particularly in light of his client's feeling that the likelihood that his children would be returned was minimal.

### **The Mother's Counselor**

[181] I have no reports from her initial counselor. I have the exhibit 13 reports from Deborah Sullivan who was engaged to assist the mother in dealing with her individual issues.

[182] Fairly consistent with the assessor and the Court's perception of the mother's testimony, Ms. Sullivan indicated that the client engaged well, was open and forthcoming with information about her family, her situation and her children. The therapist indicated that she had developed insight into the long-standing issues contributing to her past drug use and demonstrates a strong parental instinct (report date April 30, 2009).

[183] In May, 2009, the mother did not appear at the three scheduled sessions. The mother said it was difficult to attend sessions because the father was working and she had no babysitter. The therapist offered that she would attend at her home. The mother did not accept this as an option.

[184] The mother attended one of two sessions scheduled in June and three of four sessions scheduled in July during which she presented with renewed energy.

[185] The counselor noted that with the beginning of the methadone program in October, she began to have new optimism regarding the possibilities that the mother was more organized and had a better sense of the steps that needed to be taken.

[186] The mother attended all three sessions during the month of November. The counselor believed that she was gaining some insight.

[187] In December, the counselor noted that when the mother sets her mind to achieving something, she seems to be able to make it happen. The parents moved into a larger apartment, out of the neighborhood they felt aggravated their addiction.

[188] In January, the mother attended two of the three sessions and appeared to be making progress. She continued with her GED classes and set some goals.

[189] The mother attended all three sessions scheduled for February. She appeared to her counselor to be committed, doing the necessary actions to improve her chances of reuniting with her family.

[190] The counselor noted that there was a downturn in March of 2010 and in April, she attended two of the four sessions scheduled.

[191] The counselor noted, "It is difficult to get to some of the issues as they have been long standing and complex. J.'s strengths are not in the forefront at this time."

### **Family Support Services**

[192] The services of the family support worker were introduced to the parents on July 31, 2009, with the first session scheduled for August 12, 2009. There were nine educational sessions which occurred with considerable rescheduling due to the parents schedule, missed appointments and other commitments.

[193] At the August 27, 2009, session, information was exchanged between the parties. It was at this session that the parents confirmed their drug use. From their perspective this did not impede their alertness or ability to respond appropriately to the children. In fact, they both expressed the view that their drug use increased their alertness.

[194] There were unsuccessful attempts to get the parents to participate fully in budgeting education. At the September 22, 2009, meeting they advised the worker they have no credit because they owe thousands of dollars in unpaid phone, cable and power bills in various places that they lived.

[195] They were given information on the harmful effects of the use of percocet on their children. They confirmed that they did not think drug use impaired their judgment.

[196] There are numerous issues of concern that have been raised in the family skills worker's affidavit. There is evidence that the parents are capable of identifying issues.

[197] They were late for the November 17, 2009, appointment because they had run out of cigarettes and were outside a food store picking up butts and asking for cigarettes because they had run out of money this month to buy food or cigarettes. They appeared interested in the parenting program.

[198] The parents were not always forthright. In a note on January 12, 2010, to the family support worker, the mother informed the family skills worker that she thought if she refused to have the Parental Capacity Assessment, she might have a better chance of getting her children returned to her by the next court date in February of 2010.

[199] She also advised the family skills worker that **they** had been drug free for nine months when they first came to P. and once they started using drugs without getting caught, they felt no need to stop taking the drugs.

[200] The respondents clearly acknowledge that they were very much involved in drugs in Ontario prior to coming to Nova Scotia and that there has not been a significant period of time when they have been drug-free.

[201] They admitted to this worker that they were on drugs when their children were returned after the first apprehension. They were not afraid of being caught. It was only after the second apprehension they realized they needed to get off drugs.

[202] While the father did not testify at the Interim Access Hearing and only briefly during the Final Disposition Hearing, his counsel advised that the father accepted responsibility for both of them for the drug lifestyle and supported the mother's plan to have the children returned to her care. While he appeared in court with her and it was clear they were both supportive of each other and continued to live together, he advised the Court that if the Court returned the children to the mother, he would move out.

[203] The mother filed her affidavit acknowledging the long term drug use, the incident on March 12, 2010, the police involvement, the domestic abuse history, the ongoing drug use from October of 2008 to July 2009, and lying to the agency and the addictions counselor about drug use.

[204] She also acknowledged that her Plan of Care includes that her partner, the father, remove himself from the apartment permanently. She will agree to an order restricting or supervising his contact with the children and she will continue on her quest of being drug free. Due to the threats made against the agency worker, she is prohibited from being in contact with or coming to the Provincial Building housing the agency staff.

[205] She acknowledges, for the first time in testimony in court in Final Disposition, that she is now pregnant with a fourth child. This was new information not previously know to the agency. She continues to be on the methadone program.

[206] In the event the Court returns her children, she intends to relocate, possibly to the Moncton area, to be in a situation where she has some anonymity.

[207] Her plan is vague and lacks detail. She offers no evidence to the Court to support a view that any risk associated with her drug use, domestic violence, her partnership with the children's father will be, with any certainty, addressed by herself within the time required by the *Act*.

[208] There is a long history of involvement with the children's father. They appeared in court together, continue to cohabit, and reconcile after numerous domestic violence incidents in both Ontario and Nova Scotia. This speaks to the probability that this relationship will be ongoing for a considerable period of time, as will the drug use unless each of the them, independently, choose to make significant changes in their lives.

[209] They have been provided with significant services to assist them with their detoxification and rehabilitation program, both individually and collectively. While they have exhibited verbally some insight and made small moves toward accepting responsibility, they have a great deal of work to do before they will be able to parent children with any certainty that the children's best interests would be addressed.

[210] In her affidavit for December, 2008, the mother acknowledges that when she advised she refrained from illegal drugs, this was not the truth. She acknowledges that in her November, 2008, affidavit (paragraph nine), she alleged her only drug use was marijuana two to three times per week. In her final disposition testimony, she acknowledges that she was ingesting percocets at that time.

[211] The evidence does not support that she has complied with the service directives to the extent that is required in order to address her addiction.

[212] Her addictions counselor, Ms. MacDonnell, has been consistently available to the mother since January, 2008, and has been supportive of her, endorsed her and believed her representations that she was being forthright and honest in terms of her drug usage. It is clear, and the evidence supports, that she was using drugs for a far greater extent than was known to her addictions counselor and, therefore, the affidavit in support of her was based on incorrect information to the addictions counselor.

### **Final Disposition**

[213] I am satisfied that the agency has offered every available and reasonable plan to the parents of these children in order to assist them in addressing their addictions.

[214] I am satisfied that these addictions and the consequent behavior, including domestic violence, criminality, transience, instability and significant health affect, resulted in these parents being unable to address the risks associated with their addiction and to providing a safe and stable environment for the children.

[215] I acknowledge that the access supervision reports indicate that these children are excited to see their parents. The two oldest have a connection with their parents and that the parents truly love these children and wish to be good parents to them.

[216] I acknowledge that there is some connection between the parents and children. There is a genuine expression of love by the parents for their children. Love alone is not enough to address the risks associated with the lifestyle and addiction issues which historically leads to domestic discord and occasional violence.

[217] The parents have the capacity to understand the nature of their difficulty and their need to be drug free.

[218] I am satisfied that the parents will not likely to adhere to their promise to live separately and drug free.

[219] They do not have insight sufficient to address their addictions in order to put themselves in a position to parent without significant support services and ongoing assistance from the child protection agency.

[220] The youngest child is not connected in the same way to the mother and father as the two older children. She was apprehended at birth and relates to other significant individuals in addition to the mother and father to supply her with the supports necessary to nurture and promote her development. The mother acknowledges this.

[221] The legislated time lines respecting the two oldest children have been extended to reflect the time lines related to the youngest child, solely in an effort to give these parents one more opportunity, in spite of the numerous historic opportunities given to both of these parents, to address their addictions with significant interventions.

[222] The evidence supports a conclusion that there are historic issues including addiction issues and other issues in the family of origin. The consequences of the parents' inability to significantly address their addiction issues severely impair their ability to parent and place their children at significant risk .

[223] Despite the positive statements about the supervised access facilitation and the statements from both counselors of the expressed intent of the parents to address these difficulties, there is overwhelming evidence to support a conclusion that there is no

reasonable probability that the parents will address these issues in time to meet the test regarding the best interests of these children in accordance with s. 45 of the *Act*. Their expression of intent has not been matched with a corresponding behavior and conduct.

[224] The parents have a lot of work to do. It is work that they are capable of doing. They have not chosen yet to dedicate themselves to abstinence and have no insight into the necessity of abstinence such that they will be able to parent these three children.

[225] The services providers and agency personnel approached this case with an intent to maintain the children in their home, to provide the parents with services in accordance with a least intervention mode. Due to lack of parental commitment, these services have not resulted in a sufficient change which would address the risks associated with the historic, significant drug addiction and lifestyle relating to these two parents.

[226] These are three young children and their lives, particularly the lives of the two oldest, have been in limbo, awaiting their parents' rehabilitation. They are adoptable and their best interests require that in final disposition the Court focus on permanency planning to ensure that their best interests are addressed as a priority in the conclusion of these child protection proceedings.

[227] Any ongoing access with the parents would be a barrier to permanency planning and adoption.

[228] It is desirable, in accordance with legislative directives, that the children be placed together if possible and, if not, then every attempt be made to maintain sibling contact.

[229] With respect to the final visitation, I refer back to the assessment and the recommendation made by Valerie Rule regarding the need to bring finality in a therapeutically safe environment to the children and to the parents.

[230] I also refer to my decision with respect to the need to address the parents' needs to come to terms with the grief they are suffering at this final disposition. I reiterate a recommendation that every effort be made, after consultation with an appropriate therapeutic advisor, to determine whether a final visit can be safely entered into with both mother and father separately.



[231] The final order should reflect the fact that these children are placed in the permanent care and custody of the agency with no access to the parents.

Moira C. Legere Sers, J.

June 7, 2010  
Port Hawkesbury, Nova Scotia