SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v B.C., 2011NSSC 325

Date: Decision Date 20110825
Docket: SFSNCFSA066694
Registry: Sydney, N.S.

Between:

Minister of Community Services

Applicant

v.

B.C. and J.S.

Respondents

Editorial Notice

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

PLEASE TAKE NOTE THAT SECTION 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADINGS BEFORE PUBLICATION.

SECTION 94(1) PROVIDES:

Prohibition on publication
94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

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

Heard: June 29, June 30, July 7, July 8, 2011 in Sydney, Nova Scotia

Counsel: Mr. Robert Crosby, for the Applicant
Mr. Alfred Dinaut, for the Respondent B.C.

By The Court:

[1] The children involved in this hearing for Permanent Care are A.D.C. born September *, 2008 and G.T.C. born September *, 2009.

[2] The Applicant hereinafter referred to as the "Minister" applies for Permanent Care of A.D.C. and G.T.C. without access to the Respondent B.C.

[3] B.C.'s mother J.C., by agreement was made a party to this proceeding when the proceeding commenced in October 2009, through the Section 39, 40 and 41 proceedings, *Children and Family Services Act*. J.C. ceased to be a party on March 29, 2010.

[4] Mr. J.S., G.T.C.'s father ceased to have any involvement in this matter and his counsel formerly withdrew on the record on January 12, 2011.

[5] The mother B.C. requests dismissal of the proceeding and the return of the children to her care and custody. In the alternative, if her request is not granted by this Court she requests ongoing access with the children.

COURT HISTORY

[6] The Minister became involved with B.C. in relation to these two children in October 2009.

[7] The Protection Application filed October 2009 alleged that the three infant children, including an older child L.C. born February *, 2007, were in need of protective services under Section 22(2)(b) of the *Children and Family Services Act,* S.N.S. 1990, c. 5.

[8] The risk factors outlined in the Protection Application dated October 9, 2009, relate to the three children and were consented to without modification on January 4, 2010. These concerns were a) B.C. was a young mother; she was 18 years of age as of October 2009. B.C. gave birth to her first child at age 15; her second child A.D.C. the next year on September *, 2008; and her third child

G.T.C. the following year on September *, 2009. In addition, the Minister had concerns in relation to B.C.'s partner A.W., in that he suffered poor mental health. The Minister outlined further concerns that B.C.'s residence was not equipped with basic services.

[9] As the Minister continued investigation with B. C.'s family, subsequent concerns arose resulting from B. C.'s association with a new partner, T. H.

[10] The Section 39 of the *Children and Family Services Act* hearing concluded by consent on October 29, 2009.

[11] The terms of the Interim Order provided that the three children shall remain in the care and custody of B.C. subject to the supervision of the Minister upon conditions.

[12] The conditions of the Supervision Order required B.C. to co-operate, to accept guidance from the Minister, to have no contact with A.W. or T. H. when in the presence of the children, and to report if either male had any association or contact with the children. As well, the Respondent, B.C. was to refrain from the consumption of alcohol or illegal drugs. B.C. was to provide for the child G.T.C.'s special medical needs. Ms. B.C. was to comply with all of these terms failing which the Minister would take the children into care. After the non compliance clause the Order required that B.C. continue to access remedial measures and co-operate with the services of a family skills worker, continue with the enhanced parenting program by public health and continue attending at the Cape Breton's Family Place Resource Centre.

[13] On January 4th, 2010, a consentual finding was made that the three children were in need of protective services pursuant to Section 22(2)(b) which provided that the children were in need of protective services because there existed a substantial risk that the children would suffer physical harm inflicted or caused as described in clause (a). Clause (a) states the child (ren) has suffered physical harm inflicted by a parent or guardian of the child or caused by the failure of the parent or guardian to supervise and protect the child(ren) adequately.

[14] The Protection Order varied from the earlier Orders in that the three children were placed in the care and custody of the Respondent grandmother, J.C., subject

to the supervision of the Minister upon terms and conditions contained in that Order.

[15] The terms and conditions of the Section 40 Protection Order required B.C. and her mother J.C. to comply with all directions of the Minister. J.C. was not to allow A.W or T.H. to reside with, have contact with or associate with the children and that such contact should be reported immediately by J.C. to the Minister. B.C. and J.C. were to refrain from the consumption of alcohol and the use of illegal drugs. The Respondents B.C. and J.C. were to ensure that all medical needs of the children, and in particular the child G.T.C. are met; and a non compliance clause was imposed. B.C. was also required to continue to access remedial services, to co-operate with the Agency Family Skills Worker and to continue with the enhanced parenting program of public health as well as to continue with services from the Cape Breton's Family Place Resource Centre.

[16] At the time of Protection Hearing on January 4th, counsel for the Minister advised the Court that the Minister was continuing the investigation to assess the risks to the children and that once this investigation was completed and if there were no further protection concerns then the children would be returned to the care of B.C.

[17] The Minister on January 15, 2010 apprehended the two children A.D.C. and G.T.C. and placed the older child L.C. in the supervised care of the maternal grandmother J.C. upon terms. A.D.C. and G.T.C. were placed in foster care where they remain until present. Access with the mother B.C. is supervised.

[18] On March 29th the Minister agreed to an Order dismissing the proceedings involving the older child L.C. who was placed in the custody of his maternal grandmother J.C.

[19] The first disposition was held March 29, 2010. At that time the Minister outlined the services necessary for B.C. to access in order to successfully obtain custody of A.D.C. and G.T.C. The plan presented to the Court required that B.C. must make significant progress in the areas targeted. This plan outlined services provided to the older child. A.D.C. was placed in specialized foster care. G.T.C. was placed in the same specialized foster home with his sister. G.T.C. was being treated for a physical illness diagnosed as * , requiring intervention by pediatricians and consultations with I.W.K. specialists.

[20] Throughout this time period there were questions unresolved in relation to the parenthood of G.T.C.; specifically there appeared to be two potential fathers of this child and paternity testing was undertaken.

[21] At this time it was agreed between all parties that a parental capacity assessment will be undertaken involving B.C. and the two children, A.D.C. and G.T.C. At the time of the first Disposition Review on September 1, 2010, the Parental Capacity Assessment was underway.

[22] Mr. T. H. was not added as a party as paternity testing confirmed he was not the biological father of G.T.C. As of September 1, 2010 J.S. was added as a party as the father of G.T.C. The matter was adjourned to October 5, 2010 in anticipation of receipt of the Parental Capacity Assessment undertaken by Dr. R. Landry. On October 5th the Court was adjourned because the parties had just received the Parental Capacity Assessment and required time to review the Assessment.

[23] On October 19, 2010 at Disposition Review, two weeks later, the Court reconvened for Disposition Review, at which time the Minister advised the parties and the Court that the Minister was seeking a Permanent Care Order of the children A.D.C. and G.T.C.

[24] The matter proceeded to hearing on January 12 and January 14, 2011. At that time the Court heard from Dr. Martin Abenheimer, paediatrician for G.T.C.; Dr. Reginald Landry, the psychologist who prepared the Parental Capacity Assessment; Patricia Bates MacDonald, worker for the Minister; Carol Ward, foster mother; Ainslie Kehoe, Protection Worker; Lisa Carr, Cape Breton's Family Place Resource Centre; Joanne McCormick, Cape Breton's Family Place Resource Centre; Ronald Gillis, clinical therapist, Mental Health Authority and B.C., Respondent. Counsel provided the Court with submissions in support of and against the Minister's Application for Permanent Care on January 28, 2011. The Court rendered an Oral Decision on January 28, 2011 denying the Minister's Application for Permanent Care. On February 2, 2011, at the Court's direction, a draft copy of the Decision was provided to counsel to enable early preparation on the areas targeted in the Oral Decision.

[25] In summary, the Oral Decision denied the Minister's Application for Permanent Care and Custody of the children due to the fact that the Minister's agents, in this particular case the protection worker, had failed for a lengthy period of time, to maintain meaningful communication with and render assistance to B.C. The Court found that given this lapse of time by the Minister that least intrusive avenues had not been implemented as required by the *Children and Family Services Act.* The Oral Decision was subsequently edited and circulated. The addendum to the transcription of the January 2011 Decision was circulated by fax to the parties on February 4th. This addendum bridged an omission in the Oral Decision distributed January 28th, to clarify that the Court was influenced by the assertion from Ms. B.C. that she was not expecting a child at the time of the hearing.

[26] On March 11, 2011; the time lines were extended because of the Minster's lapse in providing adequate services in a timely manner and upon the finding by the Court that it was in the best interests of the children that additional time be provided to B. C. to permit she and the Minister to work together to resolve the targeted areas. The January 2011 Decision contemplated full efforts be exerted by the Minister. The Respondent B.C. was to involve herself fully in the services. This hearing was held on June 29, June 30, July 7 and July 8, 2011.

[27] Witnesses called on behalf of the Minister were Mr. Ronald Gillis; Constable Greg MacKinnon; Constable Shane Olford; Constable Mike Bryne; Diane Degaust, Access Facilitator; and Ainslie Kehoe, Child Protection Worker.

[28] Witnesses called on behalf of the mother, B.C. were Lisa Carr, Cape Breton's Family Place Resource Centre; R.J.B., male partner of B.C; and B.C.

[29] On the first day of the hearing a lengthy pre-trial was held prior to the commencement. Counsel for the Respondent advised there may be additional plans put forward by a relative of the child G.T.C., particularly, his paternal grandmother; however this plan was never presented. B.C. remained the sole Respondent.

[30] Mr. T.H., former companion to B.C., while not a party wished to remain through the proceeding as he is the biological father to the child A.C. born March *, 2011. Child A.C. is Ms. B. C.'s fourth child, born after the first Permanent Care

Application was dismissed in January 2011. A.C. is currently the subject of a separate proceeding involving the Minister and B.C.

[31] The four day hearing was held in June and July. The issues are: the current difficulties that B.C. has with her parenting skills, her lack of self esteem, her selection of partners, her absence of truthful communication with the Minister and her failure to follow through with services. Failure by B.C. to exercise regular access recently became an issue for the Minister. The Minister's Application for Permanent Care is based on the same Minister's Plan tendered in the January 2011 hearing, (Exhibit # 2).

[32] The first witness called was Ronald Gillis, a clinical therapist. Mr. Gillis had exercised one session prior to the previous Permanent Care Hearing in January. He did attempt to secure another appointment with B.C. Mr. Gillis was only able to secure a counselling appointment with her on June 23rd. Mr. Gillis advised at no time would he refuse to set up an appointment if he were asked. On their one full appointment on June 23rd, B.C. told Mr. Gillis that she did have problems in the past but that she had dealt with these issues and they no longer presented a problem. Mr. Gillis referred her to see Dr. Christianson to assess her therapeutic needs. At no time did Mr. Gillis see the Parental Capacity Assessment prepared by Dr. Landry but was advised by B.C. that Dr. Landry felt she could parent the children.

[33] The Court heard from Constable Greg MacKinnon who attended the Cape Breton Regional Hospital to find B.C. and T.H. together. T. H. advised the officer that he was permitted to be in attendance. However, when the officer took exception with this comment T. H. admitted that he was not to have contact with B.C.

[34] The officer also advised of a second incident when B.C. was in a motor vehicle accident on June 26th, 2011, three days before this hearing commenced. At that time she was with R.J.B., her new boyfriend. The status of that matter is still under investigation; however, the officer was able to advise that he was quite certain that B.C. did not have a driver's license but was operating a vehicle involved in the accident.

[35] The third witness was Constable Sean Olford with the Cape Breton Regional Municipality. The Constable investigated a disagreement at a local vacant lot on

April 26, 2011. At that time he had witnessed B.C. and T. H. fighting. The officer believed that T.H. was not to be in contact with B.C. When the police interceded B.C. tried to slap and push the police officer. This altercation resulted in B.C. being arrested for failure to keep the peace. She was released back at the police station when she had settled down.

[36] The fourth witness called by the Minister was Constable Michael Byrne on May 28, 2011. B.C. phoned the police referencing some difficulty with her former partner T.H. who wanted to see all three children. B.C. advised that T.H. threatened her new boyfriend R.J.B., to beat him up with a baseball bat. Constable Byrne tried to obtain statements from B. C. and R.J.B. but after three attempts the officer had not been successful.

[37] Ainslie Kehoe, the protection worker, gave evidence of the number of times B.C. did not attend her access; and Ms. Kehoe's many unsuccessful attempts to meet and discuss issues with B.C. from February 2, 2011 onward.

[38] On March 8th Ms. Kehoe was able to speak to B.C. briefly after a court case appearance and a meeting was set up for March 14th. B.C. rescheduled the meeting to March 15, 2011.

[39] The parties were able to meet on March 15th at the Applicant's North Sydney office. This was the first meeting they held since the Permanent Care Hearing in January, 2011. Since the January 2011 hearing B.C. had given birth to another child, A.C., born March 1st, 2011. At this time she advised Ms. Kehoe that she wanted to raise all three of her children with T. H. as her partner. At this time B.C. advised Ms. Kehoe that she had lied about her contacts with T.H. and gave Ms. Kehoe a list of their contacts between September 2010 and March 2011.

[40] B.C. indicated that at that time she was taking prescriptive drugs given to her as a result of a mouth infection and she was in pain.

[41] During this meeting B.C. advised Ainslie Kehoe that she took pre-natal courses before A.C.'s birth. She advised T.H. did not attend the pre-natal course with her.

[42] B.C. advised Ms. Kehoe that A.C.'s father was T.H. B.C. advised Ms. Kehoe that T.H. was subject to a no contact clause imposed by the Criminal Court due to assault charges involving her.

[43] Ms. Kehoe gave a listing of her subsequent unsuccessful attempts to reach and meet during the month of March, 2011.

[44] On April 6th the worker Ms. Kehoe attempted to call B.C. without any success. When B.C. did call her back and they discussed the status of B.C.'s counselling. B.C. advised Ms. Kehoe that she understood the January Court Decision gave her additional time for remedial services. Ms. Kehoe offered to help B.C. and B.C. agreed to use the additional time to secure services.

[45] Ms. Kehoe met B.C. after a court appearance on April 7, 2011 in relation to the new baby, A.C. B.C. advised Ms. Kehoe that her home was broken into by T.H. and their relationship was over.

[46] Ms. Kehoe advised she continued to attempt to contact B.C. through April, 2011with very little success. Ms. Kehoe advised she instructed office staff to connect her to B.C. when B.C. called to arrange access. Ms. Kehoe's concern in April was that B.C. was missing access visits.

[47] Through this interception Ms. Kehoe was able on May 20th to arrange an appointment for May 24th. During that phone call on May 20th Ms. Kehoe asked about Ms. B.C.'s success in counselling with Mr. Ron Gillis. B.C. was advised that she had seen Mr. Gillis a week and a half ago and that her next appointment was to see him May 23rd, which the witness advised was a holiday.

[48] Ms. Kehoe asked Ms. B.C. for an update on her progress with the Transition House Outreach and was advised that B.C. had completed that program. B.C. also advised that she was taking that program to satisfy the Minister and did not need this help as her relationship with T.H. is over. She also indicated that it was her understanding that that program had ceased. Ms. Kehoe advised that B.C. should attempt to realign herself with Transition House Outreach Program.

[49] As arranged, on May 24th Ms. Kehoe attended to find the house address given by B.C. but could not locate the house. The worker checked messages at her office and there was an early morning message from B.C. telling her to attend to

another address. Ms. Kehoe was unwilling to go to an unknown address and, therefore, the parties set up a meeting for May 25th with R.J.B., the new boyfriend's aunt and uncle. On May 24th the worker had a discussion with B.C. regarding the effect that her frequent absences from access have on the children. Ms. B.C. agreed to improve her access attendance.

[50] On May 25th, 2011 Ms. Kehoe had a meeting with R.J.B.'s aunt and uncle and B.C. B.C. advised she and R.J.B. had just become boyfriend and girlfriend, having known each other years earlier. At this time B.C. introduced R.J.B. to Ms Kehoe as her new boyfriend.

[51] During this session Ms. Kehoe advised B.C. to give her therapist Ronald Gillis a copy of Dr. Landry's report. B.C. was advised by B.C. that this had already been done. B.C. advised that she and Ronald Gillis had reviewed the Dr. Landry report and that she was advanced through stage one and two at Transition House. B.C. also advised she felt she no longer had any problems that required resolve. B.C. advised Ms. Kehoe she did not require courses from the Cape Breton's Family Place Resource Centre as she did not have her children in her care. They also discussed the fact that Ms. Kehoe has not been able to meet B.C. in her home. B.C. agreed to have Ms. Kehoe in her home.

[52] Ms. Kehoe advised that she and B.C. also discussed the incident with the police on April 26th. B.C. advised that as of April 26th her relationship with T. H. was over and she wanted his personal belongings removed from her house. She asked a friend to drive her to T.H.'s Sydney location to drop off his items. Another couple who were at that location began aggressive conduct, resulting in the police arriving. B.C. advised she became mouthy and the police took her to the police station until she could collect herself. She was then released without charges.

[53] On May 25th Ms. Kehoe advised she discussed with B.C. the negative effect her access absences had on the two children. B.C. advised she would try to attend access.

[54] Ms.Kehoe advised there was an improvement in access practices between May 26th and June 7th. However, the access supervisor on June 8th called to discuss a referral as she believed B.C. was under the influence of some medication during access. By June 23rd B.C. had missed two access visits that week. B.C. told Ms. Kehoe she did not recall cancelling access but on one of the scheduled access visits

B.C. was in a car accident which made her access visit difficult to exercise on that occasion.

[55] When Ms. Kehoe confronted her with missing access as well as missing sessions with Ronald Gillis; B.C. became annoyed, claiming there would be no further sessions between them without a third party present.

[56] Ms. Kehoe on cross examination agreed Ms. B.C.'s time was partly consumed in March and part of April with the birth of A.C. who was in the Intensive Care Unit and B.C. had to attend to her needs there. It was during this same period in April that Shawn Butler, supervisor, in a case plan meeting offered her assistance in maintaining taxi fare to her meetings as well as to assist her in attending her sessions with Ronald Gillis. It was during the same time period that the Minister deleted their concern that B.C. may be misusing drugs or alcohol. When B.C. offered to have her hair specimens tested the Applicant found that was not necessary.

[57] Lisa Carr from the Cape Breton's Family Place Resource Centre provided the Court with Exhibit # 3, a listing of all the courses that B.C. took at the Cape Breton's Family Place Resource Centre, and her attendance record. These programs ran from July 18, 2007 until April 2011. The courses included: First Steps in Parenting (2007) which B.-C. attended six out of nine. The second course was Positive Parenting (2008) and B.C. attended eight out of eight sessions. The third course was First Steps in Parenting (2008), and she attended nine out of the ten sessions. The fourth course is Common Sense Parenting (2009); she attended seven out of the nine sessions. She attended Support for High Needs Children (2009) and she attended one out of six sessions. A subsequent course was Kids Have Stress Too (2010) and she attended seven out of seven sessions. Her seventh course is Personal Stress Management (2010) which she attended nine out of ten sessions. The eighth course was You're a Better Parent Than You Think (2010), and she attended ten out of eleven sessions. The ninth course B.J.-C. took was Positive Parenting (January to April 2011), and she attended three out of the nine sessions. Ms. Carr believes that her attendance at the last session was poor as B.C. was occupied with the birth of her new child, A.C.

[58] The Court heard from Dyan Degaust, an access facilitator with the Minister. She had supervised access with B.C. and the two children since December 22, 2010.

[59] Ms. Degaust indicated that when B.C. attended access the visits went very well and that both children are affectionate with her. However B.C. had her access suspended on occasion for failure to attend access visits. According to Ms. Degaust's notes, B.C. missed three visits in April and one in May after which her access was suspended. Access was reactivated on June 2nd. After the access was reactivated on June 2nd there was no further failures to appear by B.C. Ms. Degaust indicated B.C. could reach her without difficulty and had, on two occasions, contacted Ms. Degaust on her cell phone for a matter unrelated to access. On one occasion B.C. asked the access facilitator if the children were upset when she does not attend. Ms. Degaust advised her they were, especially her daughter, A.D.C. B.C. missed the next session which was the next day.

[60] During her May 5th access visit B.C. exhibited a bruise on her neck and a cut on her lip. During that visit she advised the access facilitator that she had been using a third party, A.O. to deliver her messages to the Minister and that he was to deliver her messages to Ms. Kehoe but that A.O. failed to do so. B.C. also advised Ms. Degaust that the Minister's staff was not trying to reach her. Ms. Degaust replied that that was not true and that the Protection Worker, Ms. Kehoe had been trying to locate B.C.

[61] The June 2nd access session ended abruptly as B.C. was pale and shaky and her words were slurred. She advised Ms. Degaust that she had been taking medicine for an abscessed tooth. She left the visit prematurely in order to attend the hospital. B.C. confided in Ms. Degaust that she was not willing to let Ainslie Kehoe in her home and that some of her reasons for so doing were valid while others were not. B.C. advised that, during this time period, she was staying at friends as she could not reside in her own home which was in poor condition. B.C. told Ms. Degaust that the probable outcome of this matter would be that the children would remain in care for four months and then the children would be returned to her custody.

[62] The Court heard from R.J.B. He is B.C.'s new partner as of April, 2011. He's a 28 year old Cape Bretoner, has grade eleven, was [*Editorial note-information removed*]. He returned to Cape Breton and has been working between Cape Breton and out West. He wants to assist B.C. in the raising of her children, although he has not met A.D.C. or G.T.C. He indicated that he is currently obtaining mental counselling for post traumatic stress disorder as a result of

[*Editorial note- information removed*]. He has difficulty with a knee as well. However, he is able to work and he is currently seeking [*editorial note- information removed*]. R.J.B. indicated that he met B.C. three months ago and after a month they decided to move in together.

[63] Ms. B.C. the Respondent gave evidence and provided the Court with an affidavit which she attested to the truthfulness. B.C. also provided Exhibit # 4 as confirmation of her attempts to attend Family Services of Eastern Nova Scotia. The letter was dated May 27, 2011, and the operative paragraph is:

> **"As we have been unable to reach you by phone we are writing you to inform you that Family Service is now in a position to offer you an appointment for counselling services with Mr. Ed Burke. If you are not currently seeing someone for counselling and would like to make an appointment, please call * by June 6th, 2011."**

B.C. notes that her first appointment with Family Services will be the week after this Court hearing. B.C. does agree that she was pregnant during the January hearing on this matter and that the new baby had been born prematurely. In her Affidavit which she endorses,(Exhibit # 5), B.C. advised that she had asked the Minister to provide her services and they were unwilling to do so.

[64] In her Affidavit she advises she was not truthful regarding her recent pregnancy during the January hearing as she was afraid she would have the baby apprehended. She believes that the Minister's main concerns with her are: * suffered by her son G.T.C.; domestic violence between her and her male partners, and she believes that the Applicant is now making allegations that she was misusing drugs.

[65] B.C. advised the new baby, A.C. born in March was born prematurely. T.H. is the father. He was her support person during the delivery. She indicated that Ms. Kehoe has not provided her with a workable plan and has only visited her on two or three occasions. She indicates that Ms. Kehoe has never spent any real time with her. She believes that the Minister's staff has provided her with false hope, but in actual fact had their minds fixed on not returning the children. She believes that her life with R.J.B. will be a happy one and that he will be a help to her with the children.

[66] B.C. indicates she has no problem with the use of drugs or alcohol.

[67] B.C. acknowledged that she had no support person during the four days of this hearing, except Mr. T.H. did remain in Court for a period of time.

[68] B.C. advised that she was untruthful to the Court during the Permanent Care hearing last January concerning her pregnancy because she felt that the child would be taken into care. She wished she had told the truth about A.C. because the Minister may have helped her. She advised that she has taken many courses at the Cape Breton's Family Place Resource Centre as referenced. She maintains that she did review the Dr. Landry assessment with her therapist, Ron Gillis. She believes Mr. Gillis must have forgotten this fact. She advised that she understood from Mr. Gillis that she didn't have to discuss the problems in the Landry report because she had already satisfactorily dealt with these problems. She believes now that she has better chances of handling problems appropriately and she believes she is able to take care of all of the children's needs.

[69] Ms. B.C. has also asked the Minister to provide more access so that she can strengthen the bond with her children, but no access has been forthcoming. She concluded that her contact with the Minister since the last court date consisted of a few phone calls and four or five sessions. Ms. B.C. advised that she does not have a home of her own at the present time and that her former home was no longer habitable.

[70] B.C. explained the police incident on April 26th, 2011when she was attempting to return T.H.'s clothes to him and an argument ensued, resulting in the police taking her down to the station until she was able to collect herself emotionally. She admitted this event caused her to miss an access visit with the children.

[71] When questioned regarding the evidence B.C. gave in the January hearing to the effect that she had T.H. hidden under the bed covers in her house when the Minister's staff visited; contrary to the no contact clause. She indicated on July 7, 2011 that T.H. was never under the covers in her house when the Minister's staff came; rather that was a friend of hers. However she cannot remember who the friend was.

[72] B.C. denies that she was avoiding Ms. Kehoe from January to March 2011. However, she agreed she did not want Ms. Kehoe to know that she was pregnant.

B.C. accepts in cross examination that she told Mr. Gillis that she doesn't need counselling from him as the problem areas have been dealt with by her. B.C. maintains that she did review Dr. Landry's Parental Capacity Assessment with Mr. Ron Gillis but that he did not retain a copy.

[73] B.C indicated she did have the benefit of a Family Skills Worker when the children were with her, and then subsequently had help from a parent aid. She agrees that she's taken a number of courses at the Cape Breton's Family Place Resource Centre. She advised that her poor attendance at the Cape Breton's Family Place Resource Centre during her last course was due to her pregnancy. She agrees that during some of the courses she attended at the Cape Breton's Family Place Resource Centre that T.H. attended as well contrary to the no contact order.

[74] The services provided to B.C. are:

i. Transition House Outreach One and Two
ii. Family Skills of Eastern Nova Scotia
iii. Parent Aid
iv. Access Supervisor
v. Protection Case Worker
vi. Mental Health Services
vii. Cape Breton's Family Place Resource Centre
viii. Provincial Employment Assistance Program
ix. Parental Capacity Assessment

[75] B.C. acknowledges that over the past two years T.H. has been physically aggressive with her. On one occasion when he hit her in the face she told her protection worker that she fell upstairs, causing her injuries. She admitted to remaining involved with T.H. until March 2011.

[76] B.C. does not accept Dr. Landry's recommendations and *viva voce* evidence which outline her challenges. She agrees on cross examination that she did not have any contact with Ainslie Kehoe until after A.C. was born in March. B.C. advises that she knew the Minister was seeking permanent care for two children since October 2010. The services that she took from the time of the Decision in January 2011 are: one session with Ronald Gillis; three out of nine sessions with Cape Breton's Family Place Resource Centre and she spoke to one other person at

Family Services of Eastern Nova Scotia whose name she could not recall. She advised on cross examination that her missed access visits were due to illness for the most part. She agrees that she missed her access with her children on April 26th as that was the time she picked to return personal belongings to T.H. from which an altercation took place and she was retained for breaching the peace. B.C. admitted to missing another access visit so she could attend the police station regarding a break and enter at her home. She advised she could have given her police officer statement at another time so as not to cause her to miss access.

[77] B.C. indicated that one week prior to this hearing in June 2011 she was in a car accident. She agreed that she had no driver's license and never did have a driver's license. She did recall this being her second incident involving driving a vehicle illegally.

[78] Her present home is not habitable due to mould. She has verbally complained to the building supervisor but has no filed a written complaint.

DECISION

[79] This case is plagued by domestic violence, by naivety, and untruthfulness resulting in the failure to change and grow. B.C. has not improved despite given every opportunity to do so. I find that the Minister did try the least intrusive remedies that were not engaged by the mother. Given the ages of the children and the maximum time limits have been exhausted and exceeded, the Court is left now to decide whether the children should be placed in permanent care and custody of the Minister, or the proceedings dismissed and the children returned to the care of the Respondent.

[80] The first Disposition plan for A.D.C. and G.T.C. was fairly optimistic:

> **(g) A statement of the anticipated plan at final disposition, where applicable:**
>
> **The children, A.D.C. and G.T.C. have been in the Agency care since January of 2010. It is the hope of the Agency that the Respondent, B.C. has acknowledged the major**

presenting problems and begin the process of problem solving.

Significant progress must now be made in terms of B.C. stabilizing her personal circumstances, demonstrating a commitment to consistently being available for the children and being able to identify and meet the needs of the children.

Final disposition will be dependent on the outcome and follow through with the current case plan and the therapeutic intervention with the family. The engagement in the services offered and ay progress observed.

7. Where the Agency proposes that the child be placed in the permanent care and custody of the Agency:

Not applicable.

[81] At this point the Minister believed that with proper care the Family could be reunited. The Agency Plan of January 12, 2011 paints a very different picture, outlining involvement since May 2008. That Plan outlines, as confirmed in evidence, that B.C. has an unfortunate choice in men and domestic violence continues to exist in her life. Ms. B.C.'s situation was clarified through the Parental Capacity Assessment and *viva voce* evidence which had been distributed after the January 2011 hearing. During questioning Dr. Landry stated at page 25:

Q. ...and feeding and what was effective for his needs. Now, on page eleven in your summary, in the second last paragraph you indicated B.C. likely has the ability to work through some of these issues; and you mentioned earlier that the issues had to do with her life experiences?

A. Hmm-mm.

Q. Is that correct?

A. Yes.

Q. So she needs, what you're saying is she needs professional help in order to work through these problems?

A. Yes.

Q. And that she should attend either a social worker or a psychologist...

A. Yes.

Q. ...in order to work through them. In the next paragraph you say she has the ability to parent the children and develop an appropriate attachment, correct?

A. Yes.

Q. So there' not difficulty with parenting here, it that the other things might get in the way, such as the problems that you've mentioned that she needs help for?

A. Well, um, in the literature the distinction is made between parenting ability and parenting capacity. The issue of capacity being the broader aspect of parenting, and so in the report B.C. does display ability, parenting ability to be attentive and attached and warm and caring with her children. There were just these other factors that affect her parental capacity.

Q. So that's why you conclude at the last sentence however Ms. B.C. may be able to assume a more effective parental role if

she dealt with some of the issues outlined above, is that correct?

A. That's right.

Dr. Landry did conclude that given the right circumstance and with the proper interventions which he outlined in his assessment and tendered at both Permanent Care Hearings in January 2011 and July 2011, that her parenting could improve.

[82] I rejected Permanent Care last January after a thorough review of the evidence. I found that services necessary for B.C. to straighten out her life had not been readily made available to her. Since the January Decision was rendered , Ms. B.C. by her own admission avoided contact with a protection worker until her fourth child was born on March *, 2011. The Minister had been seeking permanent care from October 2010 yet B.C. does not appreciate her jeopardy or the basis of this jeopardy.

[83] I find as a fact that she enters relationships recklessly and has not, after losing four of her children, come to terms that there is significant progress to be made before she can parent appropriately. I was unsure in January whether the Agency had, in fact, made services clear and available to her; however, the subsequent six months have made it clear that these services have been made available to her and that Ms. Kehoe has been available to her. Since January 2011 Ms. Kehoe has been diligent but mostly unsuccessful in her efforts to locate B.C. in order to attempt to implement remedial measures. Ms. Kehoe in order to find B.C. had to intercept a phone call to another member of her office when Ms. B.C. was looking for access assistance. This was the only way Ms. Kehoe could locate her in order to set up sessions to review services.

[84] I find B.C. put a break- and-enter investigation in her home ahead of an access visit which shows how her prioritizing is immature. B.C. places returning personal property to her former boyfriend, T.H. who had been violent to her as more important than attending scheduled access. In March, 2011 B.C. wants to make a life for the children with T.H., her abusive partner. In April 2011 she wanted to make a life for the children with her new friend, R.J.B. B.C. asks the access facilitator if the children mind when she does not arrive for access and was advised that they did mind, especially her daughter A.D.C. Her actual response

was not to attend access the next day. From April 2011 to June 2, 2011 B.C. missed several access visits without explanation.

[85] I find B.C.'s response to vital parenting concerns is to avoid and be untruthful to persons who could have helped her learn to parent appropriately.

LEGISLATION

[86] I have considered the preamble of the legislation and in particular, the following sections:

> **AND WHEREAS children are entitled to protection from abuse and neglect;**
>
> **AND WHEREAS parents or guardians have responsibility for the care and supervision of their children and children should only be removed from that supervision, either partly or entirely, when all other measures are inappropriate;**
>
> **AND WHEREAS children have a sense of time that is different from that of adults and services provided pursuant to this Act and proceedings taken pursuant to it must respect the child's sense of time.**

Also, the following sections are relevant:

> **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.**
>
> **(2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child. 1990, c.5, s. 2.**
>
> **---**
>
> **3(2) Where a person is directed pursuant to the 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 circumstance 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.

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.**

[87] I find on the balance of probabilities that the least intrusive avenues have been attempted and rejected by B.C. It was my finding in January that if B.C. committed herself into the areas outlined in the Parental Capacity Assessment that this result could be different; but she has not. She has made herself less available in the five month period following the January 2011 hearing, knowing she was at risk of losing her two children permanently. At the completion of this hearing in July 2011 it was clear B.C. knew her problem areas since October 2009 and has yet to engage meaningfully in remedial measures.

[88] It is Ms. B.C.'s immaturity and unwillingness to engage meaningfully in the services that cause the children, if returned to her, to be at risk. These critical problems are compounded by her repeated untruthfulness on important issues. The risk of returning the children to B.C. is to leave them exposed to domestic violence and physical harm through neglect.

[89] I have considered the evidence as a whole, including all witnesses heard and Exhibits tendered.

[90] I have considered the preamble to the *Children and Family Services Act* and all relevant statutory provisions. I am required to make an Order in the children's best interest which respects their sense of time. It is important that these children have a secure placement with a stable family, which provides continuity of solid care without disruption.

[91] I have considered the Minister's plan. I rejected the plan as premature on January 28, 2011 for reasons given. Time lines were extended past the statutory limits as I found allowing additional time to be in the best interests of the children.

The succeeding five months were given in order that B.C. have an opportunity to engage in therapy in the areas of concern. She has failed to engage in these services and she questions the actual need for these interventions.

[92] Since January 2011 the Minister's staff have been diligent in the attempt to help B.C. These services have been refused by B.C.

[93] The statutory time has been exceeded without any progress made by B.C.

[94] Given her behaviour during the past five months, fully knowing her situation, I find on a balance of probabilities she is unlikely to change in the foreseeable future. I find on a balance of probabilities all statutory requirements placed on the Minister have been met. The Order that is in the children' best interest as outlined in Section 3(2) *Children and Family Services Act* is permanent care.

[95] The agency plan for the children is adoption. B.C. has not discharged the onus to establish special circumstances that would justify continued access as set out in Section 47 *Children and Family Services Act* and clarified in **Children and Family Services of Colchester County vs K.T**. [2010] N.S.J. No. 474(at paras 39 and 41). There is no basis for an access order which could impede adoption.

[96] The children have a bond with their mother, particularly A.D.C. and, no doubt, they will grieve. I award six visits with both of the children and the visits are to be gradually reduced from an hour and a half, down to an hour, down to half an hour. If B.C. is not appropriate during the weaning off visits, the visits are to be termination. While both of these children have special needs, adoption is a possibility. I would recommend, if at all possible, that the children be adopted together as this preserves the one acknowledged bond that can survive this hearing.

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M. Clare MacLellan

J