SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Cite as: C.M. v. Nova Scotia (Community Services) , 2011 NSSC 431

Date: 20111118
Docket: SFSNCFSA63742
Registry: Sydney, N.S.

Between:

C.M., A.M. and P.M.

Applicants

v.

Minister of Community Services

Respondent

Editorial Notice

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

TO PUBLISHERS OF THIS CASE:

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
1. 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 Darryl W. Wilson

Heard: June 21, 2011, in Sydney, Nova Scotia

Written Submissions: July 26, 2011 and July 28, 2011

Written Decision: November 18, 2011

Counsel: Matthew MacNeil , Counsel for C.M.
Carolyn MacAulay, Counsel for A.M. and P.M.
Sanaz Gerami, Counsel for Minister of Community Services

By the Court:

[1] C.M., the mother, applied to terminate an Order for Permanent Care and Custody of J.M., her child. A.M. and P.M., the maternal grandparents, were granted party status pursuant to Section 36(1)(f) of the *Children and Family Services Act, S.N.S. 1990, c. 5* after a contested hearing in June, 2011. **C.M. v. Minister of Community Services**, 2011 NSSC 222.

[2] This proceeding deals with the merits of the applications by the mother and grandparents to terminate the Permanent Care and Custody Order.

[3] C.M. now supports the application of her parents.

[4] However, if the Court does not grant the grandparents' application, C.M. requests the Order be terminated and the child returned to her care.

[5] The evidence, which will be referenced later, discloses that C.M. has not established a material change in her circumstances since the granting of the Permanent Care and Custody Order and it would not be in J.M.'s best interests to be placed in her care even if a material change in circumstances was established.

BACKGROUND.

[6] J.M., the child, was born September *, 2008. He was taken into the care of the Minister of Community Services on April 3, 2009. Three weeks after being taken into care he was placed in the interim care of his paternal grandparents while the mother accessed services in order to address protection concerns. The maternal grandmother, who had discussed interim care of J.M. with the paternal grandmother, but not the Minister, was content with the paternal grandmother providing interim care.

[7] C.M. is also the mother of N.M., age 10, from an earlier relationship. She placed N.M. in the custody of her parents in 2004. Although the maternal grandparents initiated court proceedings for custody of N.M., they did not proceed with the application and no Order was issued. N.M. has lived with his maternal grandparents since 2004. He is not the subject of any protection proceedings.

[8] The mother consented to an Order of Permanent Care and Custody for J.M. on February 16, 2010. The plan of care filed by the Minister of Community Services was for J.M. to be placed for adoption with his paternal grandparents.

[9] The maternal grandparents were not aware that their daughter had consented to an Order of Permanent Care and Custody and that the paternal grandparents would be adopting him. They did not find out about the Permanent Care and Custody Order and the plans for adoption until September, 2010. At that time, the maternal grandparents contacted the Minister seeking permission to take J.M. with them and his half-brother on a short vacation to Moncton. The Minister could not agree to this request since J.M. was in the permanent care and custody of the Minister with plans to be placed for adoption.

[10] The maternal grandparents were extremely upset they were not informed of the Permanent Care and Custody Order. Until September, 2010, the maternal grandparents were under the impression that their daughter was accessing services and would eventually have the child returned to her care. The maternal grandfather believes she did not tell them she consented to a Permanent Care and Custody Order because they had been encouraging her to access services. At that time, they could not contest the Permanent Care and Custody Order. They were content with the care their grandson was receiving with the paternal grandparents and they were able to visit him on a weekly basis at their home. They were also comforted by the fact that their grandson would remain with family.

[11] The process to place J.M. for adoption with his paternal grandparents had begun in March, 2010 after the Permanent Care and Custody Order was issued. In July, 2010, while completing their S.A.F.E. Assessment, the Minister received information that the paternal grandparents had not disclosed during the 1.5 years J.M. was in their care. The Minister gave the grandparents time to respond to this information. The Minister was assured by the grandparents that they would address the Minister's concerns. The grandparents were unable to address the Minister's concerns. In January, 2011, almost one year after the Permanent Care and Custody Order was issued, the Minister decided to abandon the plan to place J.M. for adoption with his paternal grandparents.

[12] In January 2011, the maternal grandparents became aware that the Minister was not proceeding with the permanent placement of J.M. with his paternal grandparents by adoption. At that time, the maternal grandparents requested the

Minister place J.M. with them for the purposes of adoption. They were advised that someone would be in touch with them. The Minister did not respond directly to the maternal grandparents' request.

[13] The Minister moved J.M. to a new foster-to-adopt home on February 16, 2011. The Minister did not allow the maternal grandparents to visit with J.M. after they decided not to proceed with the adoption by the paternal grandparents. At a case conference meeting on March 3, 2011, the Minister decided it was time to discuss the adoption of J.M. with his new foster parents.

[14] The Minister held a case conference on March 23, 2011 on the issue of J.M.'s adoption. A decision was made to place J.M. in a permanent adoptive home with his current foster parents.

[15] The maternal grandparents' request to be considered as adoptive parents was discussed during this case conference. The Minister did not support placing J.M. with his maternal grandparents for the purpose of adoption for the following reasons:

> (1) J.M. has been in the permanent care and custody of the Minister for a year;
>
> (2) The unforeseen delays regarding the adoption process of the paternal grandparents;
>
> (3) The unforeseen circumstances changing the Minister's position regarding the adoption plan of the paternal grandparents;
>
> (4) The child's sense of time and his best interests;
>
> (5) The extended period of time that would be required to train and assess the maternal grandparents versus the readiness and willingness of the current foster parents to adopt J.M. immediately;
>
> (6) The uncertainty of the maternal grandparents being approved for adoption;
>
> (7) The need to establish permanency and stability for the child;

(8) J.M. had settled very well in his current foster placement.

[16] The maternal grandparents have had custody of their older grandchild, N.M., since 2004. J.M. lived with them for a brief time along with his mother after his birth. They visited J.M. with their daughter, at the Minister's offices, before he was placed with the paternal grandparents. They had regular weekly visits with J.M. while he was in the care of the paternal grandparents before and after the Permanent Care and Custody Order was issued. They would take N.M. with them on these visits and N.M. played with J.M. They celebrated Christmas with J.M. The Minister was not aware of the extent of the contact that the maternal grandparents and N.M. had with J.M.

[17] The maternal grandparents own their own home in *. The maternal grandmother has been employed as a * with the same employer for the last 18.5 years. The father worked 20 years as a *. For the last four years he has been employed as a *. His work has taken him to Western Canada for periods of time. Recently he was employed in the local area and is presently receiving EI benefits.

THE LAW

[18] Section 48 of the *Children and Family Services Act*, *supra*, provides in part:

> **Termination of permanent care and custody order**
> **48 (1) An order for permanent care and custody terminates when...**
>
> > **(d) the court terminates the order for permanent care and custody pursuant to this Section.**
>
> **...**
>
> **(3) A party to a proceeding may apply to terminate an order for permanent care and custody ..., in accordance with this Section, ...**
>
> **...**
>
> **(8) On the hearing of an application to terminate an order for permanent care and custody, the court may**
>
> > **(a) dismiss the application;**
> >
> > **(b) adjourn the hearing of the application for a period not to exceed ninety days and refer the child, parent or guardian or**

> **other person seeking care and custody of the child for psychiatric, medical or other examination or assessment;**
>
> **(c) adjourn the hearing of the application for a period not to exceed six months and place the child in the care and custody of a parent or guardian, subject to the supervision of the agency;**
>
> **(d) adjourn the hearing of the application for a period not to exceed six months and place the child in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency; or**
>
> **(e) terminate the order for permanent care and custody and order the return of the child to the care and custody of a parent or guardian or other person.**
>
> **...**
>
> **(10) Before making an order pursuant to subsection (8), the court shall consider**
>
> **(a) whether the circumstances have changed since the making of the order for permanent care and custody; and**
>
> **(b) the child's best interests.**
>
> **...**

[19] In addressing the issue of whether there has been a change in circumstances since the making of the Order for Permanent Care and Custody, Judge Daley in **C.G. v. Family and Children Services of Lunenburg,** [1999] N.S.J. No. 437, stated at paragraphs 8 and 9:

> **8 Concerning the first question, it is important to recognize there may be more than one set of circumstances that may be pertinent including that of the parent's, the family's, or the child's. The usual approach is to explore the family's or parent's circumstances that led to the order and determine if there has been any change since then before moving on to the second question. The concentration is on the critical factors that influenced the making of the last disposition order. The parallel approach focuses on what changes to the child's circumstances have occurred since the order. Any**

change in circumstances of the child are important and it should not be assumed that a child's circumstances are not open for consideration at this stage. Changes in circumstances of a parent, the family unit or the child are not necessarily the same, or have the same impact, either beneficially or detrimentally, on everyone involved.

9 The change must be significant. See D. (M.) v. Children's Aid Society of Halifax (1993), 123 N.S.R. (2d) 94, 340 A.P.R. 94, [1993] N.S.J. No. 306 (N.S. Fam. Ct.), par 11,12; and, QL: (N.S. C.A.); Nova Scotia C.A. No. 02910, April 28, 1994:

> **11 ... The court had taken the position that if there is no change of the circumstances of the person applying for termination or change of the circumstances of the child, then there are no grounds for terminating the permanent order. The change must be significant, relevant and a positive benefit for the welfare of the child to result in a termination order. The reference to the child's best interests takes the matter to Section 3(2) which requires the court to consider the relevant circumstances enumerated in Section 3(2). Section 48(10) is a two step process. First is the proof of a change of circumstances. This requirement is based on the assumption that the original order was made on proper grounds and was made in the best interests of the child, and should not be interfered with, except by appeal, unless the circumstances have changed. The second step is the application of the child's best interests rule to the change of circumstances. If it can be proven that the change has or will have a positive effect on the child, then the requirements have been met for the court to make an appropriate order. It is my view that a termination order requires proof of a change of circumstances before applying the best interests test.**
>
> **12 In this application for termination then, the onus rests on the applicant-mother to prove on a balance of probability that there has been a significant, relevant and positive change of her circumstances or the child's circumstances. If she does that, then the next step is for her to prove that it is in the best interests of the child to be put into her care. The circumstances listed in Section 3(2) must be taken into consideration along with any other relevant circumstances. The findings and basis for the order of Chief Judge Black need to be addressed by the mother to determine if there is a change in circumstances.**

[20] C.M., the mother, has not established a material change in her circumstances since the Permanent Care and Custody Order was granted. C.M.'s abuse of drugs and violence in personal relationships were risk factors that resulted in the apprehension of her child and the eventual issuance of a Permanent Care and Custody Order. She has yet to adequately address those risk factors. She was residing at Transition House at the time she filed her application to terminate. She has attended a 5-day Addiction Education Program and has scheduled appointments with several counsellors and professionals to address addiction, mental health and relationship issues, but she has not attended these sessions or benefited from services. She was charged with several criminal offences and spent time in jail in the months preceding her application. In January, 2011, she was involved in a violent incident with a partner in which she sustained serious injuries.

[21] The granting of party status to the grandparents is not a material change in the mother's circumstances.

[22] There has been a material change in the child's circumstances since the issuance of the Permanent Care and Custody Order. The mother agreed to a Permanent Care and Custody Order at a very early stage in the protection proceedings on the understanding the child would be permanently placed with the child's paternal grandparents through adoption. Her parents, who were caring for an older child, were not informed of her plans. I am satisfied they would have offered themselves as a family placement had they been aware their daughter was not accessing services and the child was being placed in the permanent care and custody of the Minister. It is clear that the mother consented to a Permanent Care and Custody Order on the condition that the child would be placed with family and the Minister's plan was to place the child with the paternal grandparents for the purposes of adoption. A material change in the child's circumstances occurred when the paternal grandparents were not able to complete the adoption and the child was moved to a non-family foster-to-adopt home.

[23] The child has been in the care of the Minister pursuant to a Permanent Care and Custody Order since February, 2010. The maternal grandparents notified the Minister of their intent to adopt the child or assume custody of him in January, 2011, immediately after they became aware the paternal grandparents were unable to adopt the child. While the Minister moved to find the child another permanent

placement, their previously unfettered discretion to permanently place the child was now subject to delay if a party applied to terminate the Permanent Care and Custody Order. At the time of her application, there were no restrictions on the mother's right to apply to terminate the Permanent Care and Custody Order.

[24] Counsel for the Minister submits that the grandparents have not met the onus of proving a material change in circumstances because the child will be in need of protective services if the Permanent Care and Custody Order is terminated. Further, the maternal grandparents are not the proper persons to care for the child. If a material change in circumstances is proven, it is the Minister's submission that it is not in the child's best interest to terminate the Order.

[25] The nature of a termination proceeding was discussed by Bateman, J.A. in **G.(S.) v. Children's Aid Society of Cape Breton**, 151 N.S.R. (2d) 1 at paragraphs 13 through 19.

> **13 In Telfer v. Family and Children's Services of Annapolis County (1982), 50 N.S.R. (2d) 136 (S.C.A.D.) Jones, J. A., for the court, wrote at p. 154:**
>
> > **I agree that on an application for termination the primary consideration must be the best interests of the child. A judge must be satisfied the parent's circumstances have changed so there is no longer any need for protection and that the parent is a proper person to care for the child, and when the application is made that it is in the best interests of the child to terminate the order. (emphasis added)**
>
> **14 While in Telfer the Court was considering the test to be applied under the former Children's Services Act, S.N.S. 1986, c. 8, s. 48(10) of the current Act amounts to legislative expression of that test.**
>
> **15 In C. M. v. Catholic Children's Aid Society of Metropolitan Toronto and Official Guardian (1994), 2 R.F.L. (4th) 313 (S.C.C.), the society sought an order of Crown wardship without access for the purposes of adoption, in relation to a child who had been in the care of the society. This was a status review proceeding pursuant to the Child and Family Services Act, R.S.O. 1990, c. C.11, a proceeding analogous to a termination hearing. The trial judge ordered that the child be returned to the mother. That order was affirmed on appeal to a judge of the Ontario High Court (General Division). On further appeal to the Ontario Court of Appeal, the child was made a Crown ward, without access. The Court of Appeal rejected the proposition,**

adopted by the trial judge, that the child must be returned to the parent unless the society could demonstrate that there was some continuing deficiency in the parenting capacity of the natural parent.

16 On further appeal to the Supreme Court of Canada, L'Heureux-Dube, J., writing for the court, endorsed the approach of the Court of Appeal. At p. 342 she wrote:

> **The examination that must be undertaken on a status review is a two-fold examination. The first one is concerned with whether the child continues to be in need of protection and, as a consequence, requires a court order for his or her protection. The second is a consideration of the best interests of the child, an important and, in the final analysis, a determining element of the decision as to the need of protection. The need for continued protection may arise from the existence or the absence of the circumstances that triggered the first order for protection or from circumstances which have arisen since that time. As the Court of Appeal said: [at p. 110, 47 R.F.L.]:**
>
> **We agree that a children's aid society, as the representative of the state, must continue to justify its intervention by showing that a court order is necessary to protect the child in the future.**
>
> **Regardless of the conclusion reached at this first stage, the need for continued protection encompasses more than the examination of the events that triggered the intervention of the State in the first place. As the Court of Appeal further noted:**
>
> > **We do not agree, however, that this means, in the absence of proof of some deficiency in the present parenting capacity on the part of the natural parent, that the child must be returned to the care of the natural parent. A court order may also be necessary to protect the child from emotional harm, which would result in the future, if the emotional tie to the care givers whom the child regards as her psychological parents, is severed. Such a factor is a well recognized consideration in determining the best interests of the child which, in our opinion, are not limited by the statute on a status review hearing.**

> **This flexible approach is in line with the objectives of the Act, as it seeks to balance the best interests of children with the need to prevent indeterminate State intervention, while at the same time recognizing that the best interests of the child must always prevail. In this regard, I agree with the conclusions reached by Professor Phyllis Coleman in "A Proposal for Terminating Parental Rights: 'Spare the Parent, Spoil the Child'" (1993), 7 Am. J. Fam. L. 123, at p. 133:**
>
> > **Focus on parental fitness is inappropriate in many termination cases. Rather, when the child is young, emphasis should be on needs and interests of the child.. . . Parental rights should be terminated if . . .it is determined it would be in the best interests of the child to terminate. (emphasis added)**

17 These principles are equally applicable to a termination proceeding under the Children and Family Services Act, as is expressly recognized in s. 48(10).

18 Section 48(10)(b), in requiring the court to consider the child's best interests, implicitly refers the court back to s. 3(2) which provides:

> **3(2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:**
>
> > **(a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;**
> > **(b) the child's relationships with relatives;**
> > **(c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;**
> > **(d) the bonding that exists between the child and the child's parent or guardian;**
> > **(e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;**
> > **(f) the child's physical, mental and emotional level of development;**

> **(g) the child's cultural, racial and linguistic heritage;**
> **(h) the religious faith, if any, in which the child is being raised;**
> **(i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;**
> **(j) the child's views and wishes, if they can be reasonably ascertained;**
> **(k) the effect on the child of delay in the disposition of the case;**
> **(l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;**
> **(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;**
> **(n) any other relevant circumstances.**

> **19 Under the scheme set out in the Act, a permanent care order is generally granted only after a series of attempts by the agency to support or facilitate the rehabilitation of the parent, and the failure of rehabilitation to occur within a reasonable time frame. Such was the case here. Appropriately, once a permanent care order has been made, in the termination proceeding, there is a shifting of focus, to the best interests of the child, not in the context of the child and a hypothetical care giver, offered as an alternative to the parent, but in the context of the new environment the child has come to know.**

[26] Counsel for the Minister referred the court to the following evidence in support of her submission:

> (1) The risky behaviours exhibited by C.M. and her brother and the maternal grandparents' close relationship with them could put the child in need of protective services if he is placed in their custody. The maternal grandparents have the care of C.M.'s older child because of child protection concerns but permit that child to spend time with C.M. at her own residence

on weekends and overnights, despite ongoing child protection concerns; they allow C.M. to reside in their home with them and N.M. when she has no where else to go; the maternal grandmother believes a mother should parent her child; they allow their son to attend at their home with their permission even though there is a Recognizance restricting his attendance and/or his contact with them; their son, who has an extensive criminal record, has resided with them in the past while they were caring for N.M.

(2) The grandparents' evidence is not credible because they failed to disclose significant relevant information about their future care of N.M. When C.M. applied for Income Assistance in December, 2011, she included the child N.M. on her Income Assistance Budget. Initially, she told the Income Assistance Worker that N.M. was living with her but later said he was staying at her parents and visiting her on weekends. C.M. receives the Child Tax Benefit for N.M. even though he lives with her parents. C.M. indicated N.M. would be residing with her on two of the three Confirmation of Occupancy Forms she filled out for landlords. C.M. also initiated an application for child maintenance for N.M. at the direction of an Income Support Worker. In July, 2011, C.M. removed the child, N.M., from her Income Assistance Budget and also discontinued her application for child maintenance.

(3) The maternal grandparents' evidence is not credible because they provided inconsistent testimony with respect to their son's contact with their grandchildren. There is a Recognizance in place with conditions that their son not attend their residence or have contact with them. In April, 2011, the paternal grandfather called the police to have his son removed from their premises because he was causing a disturbance. He also testified that, on an earlier occasion, he asked his son to be present for a family photograph taken in a local park, which included both grandchildren, as well as his three children, since he was uncertain if they would all be together in the future. He stated this is the only time his son had contact with the grandchildren. However, the maternal grandmother stated that the recognizance allows their son to be in their presence with their permission and they allow him in their home if he is "normal" and not causing a disturbance.

(4) There is uncertainty who will be caring for J.M. in the future if the Permanent Care and Custody Order is terminated, based on the existing

> parenting arrangement for N.M. There is no Order giving the grandparents formal custody of N.M.; C.M. continues to receive the Child Tax Benefit for N.M; C.M. had informed her Income Assistant Worker and landlord that her son N.M. would be residing with her and the grandparents allow N.M. to spend weekends and overnights with C.M. despite child protection concerns.

[27] The grandparents disagree with the submission on behalf of the Minister that they are not proper persons to care for the grandson and that he would be in need of protective services if placed in their care. Counsel for the grandparents submit that it is inconceivable the Minister would initiate child protection proceedings if J.M. was placed in their custody since the concerns expressed in the Minister's submission would also apply to N.M. and child protection workers on behalf of the Minister have not taken any protection proceedings with respect to him. There is no credible evidence to suggest that anyone other than themselves are primarily caring for N.M. They reside in * and N.M. attends school in *. C.M. resides in an apartment in Sydney. They allow N.M. to visit with his mother when conditions are appropriate. There is no evidence that N.M. was put in harms' way by these visits and there is evidence he is thriving. They are aware of the failings of their children will take steps to protect their grandchildren from their actions as they have done in the past. They can't control the behaviours and actions of their adult children and did not know C.M. told Income Assistance workers that N.M. was living with her. Although they would like and prefer to have their daughter care for her children, there are no plans in place to return N.M. to her care. They acknowledge that C.M. receives the Child Tax Benefit for N.M. but stated that she gives it to them. Because they did not complete the court proceedings for custody of N.M., they do not have the necessary documentation to make application for the Child Tax Benefit. C.M. told them about applying for child support from N.M.'s father, but they were opposed because he is not a good father and they did not want him involved in N.M.'s life. They did not include information about C.M. because they did not believe her circumstances were relevant since she was participating in the hearing to support their plan to have J.M. placed with them.

[28] Counsel for the grandparents submit that they have met the onus of proving a material change in circumstances and that it is in J.M.'s best interest to terminate the Permanent Care and Custody Order and place him in their custody for the following reasons:

(1) They have the necessary financial means to support both of their grandchildren. The grandmother has been employed at her job for almost twenty (20) years while the father has worked or collected E.I. benefits over the years. He has always been able to find work;

(2) Neither has a criminal record or major health concerns that would preclude them from parenting long-term;

(3) They have a comfortable home which they have owned for many years which can accommodate both grandchildren;

(4) They have plans in place for childcare, if necessary, and they have demonstrated ability to meet J.M.'s health, education and other needs by their parenting of N.M.

(5) They had a close relationship with J.M., who also knows them and his brother, N.M. They can offer J.M. a home where he would maintain his relationships with family members in a safe and secure environment;

(6) They have demonstrated the ability to put the needs of their grandchildren first when confronted by unacceptable behaviour by their children. They called the police to have their sone removed from their premises when he was creating a disturbance. They have assisted their daughter without exposing their grandchild to harm;

[29] Counsel for the Minister submits it is in J.M.'s best interest to dismiss the application, thus permitting the Minister to complete the adoption process with J.M.'s current foster family. Counsel for the Minister submits that the Minister's plan is the best plan to provide J.M. with his need for security as a member of family. It would ensure continuity in his care in a home where he has resided in since February, 2011. It would mitigate the risk that he may suffer harm if his placement is moved. Given his young age, it is important for his development that there be stability in his life and a permanent placement is assured with the current foster family, while there is uncertainty whether the grandparents would meet the criteria for adoption and any delay in his permanent placement would not be in his best interest.

CONCLUSION

[30] The onus is on the grandparents to prove on a balance of probabilities a material change in circumstances and it is in the child's best interest to terminate the Permanent Care and Custody Order.

[31] A material change in the child's circumstances occurred since the issuance of the Permanent Care and Custody Order when the permanent placement with the paternal grandparents broke down and the child was moved to a non-family foster-to-adopt home.

[32] The maternal grandparents have always shown an interest in the child's welfare. The child and mother resided with them after his birth; they visited the child after his apprehension on a regular basis, they were not aware of the Permanent Care and Custody Order consented to by their daughter. They have been caring for C.M.'s older child for many years. They immediately made known their wishes to have the child placed in their care in January, 2011, when the permanent placement with the paternal grandparents broke down.

[33] The child has no special development needs. According to evidence on behalf of the Minister, he settled into the foster home after an initial adjustment period. The child is familiar with his maternal grandparents. The child had been residing with his current foster family for one month when the *Application to Terminate* was initiated. The Minister was aware the maternal grandparents wanted the child returned to their care when they moved him to his current placement. The risk the child may suffer harm through being removed from that home and being placed with family that he has known in the past is minimal.

[34] The grandparents can provide the security and stability necessary to meet the child's development needs. They have provided care for C.M.'s older son for many years, without any child protection referrals. They have the necessary financial means and resources, a stable relationship and a commitment to care for the child to ensure his appropriate development in the future.

[35] The maternal grandparents can provide the child with the opportunity to develop relationships with relatives in a safe and stable environment.

[36] The Court concludes that it is in the child's best interest to terminate the Order for Permanent Care and Custody, and pursuant to Paragraph 48(8)(e), return the child to the care and custody of the maternal grandparents.

[37] The child's father was not named as a party in the original child protection proceedings. Based on the consent of the Respondent mother, the Court directs an Order issue with the grandparents as Applicants and the mother as Respondent, granting the grandparents sole care, control and custody of their grandchild L.M. The Custody Order is subject to the condition that they notify the Minister of Community Services of any change in the child's care or custody. The mother's access shall be supervised until such time as a court of competent jurisdiction orders otherwise.

[38] The child shall be returned to the care of the grandparents after a reasonable time to allow for adjustment and familiarization.

_____

J.