

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. K.C.*, 2016 NSSC 316

Date: 20161117

Docket: SFSNCFSA No. 094029

Registry: Sydney

Between:

Nova Scotia (Community Services)

Applicant

v.

K. C-S. and C.T.

Respondents

<p>Restriction on Publication: <u>Publishers of this case take note that s. 94(1) of the <i>Children and Family Services Act</i> applies and may require editing of this judgment or its heading before publication.</u></p>

Judge: Associate Chief Justice Lawrence I. O’Neil

Heard: February 10, 11 and 12, 2016; June 21 and 22, 2016 in Sydney, Nova Scotia. Written submission received in September 2016.

Counsel: Adam B. Neal, Counsel for the Minister
Damien Barry, Counsel for K. C-S.
C.T., not participating

Section 94(1) of the *Children and Family Services Act* provides:

94(1) Prohibition on publication

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.

By the Court:

Introduction

[1] As provided by R.82.19, I have assumed responsibility to complete this proceeding as a consequence of the presiding Judge becoming unavailable to do so. Evidence was first offered on February 10, 11 and 12, 2016. I first heard evidence on June 21, 2016.

[2] The Minister of Community Services has applied for the permanent care of two children, Z. C., born November 15, 2012 and B. C., born March 27, 2014. K. C-S. is the biological mother of the children. The two fathers have not participated in these proceedings. The principal governing legislation is the *Children and Family Services Act*, S.N.S. 1990, c.5, referred to herein as the *CFSA* or the *Act*.

[3] A third and older child of K. C-S. is not the subject of this proceeding. That child D. born February 27, 2008 lived with the maternal grandmother until recently.

History of Proceedings

[4] Section 45 of the *CFSA* provides that proceedings involving children must be completed within identifiable time frames. These time frames vary, reflecting the age of the children. The proceeding itself has several stages and each of these stages must be completed within shorter time frames. Typically, a proceeding that runs the entire time line has an interim hearing stage; a protection stage; a disposition stage, reviews of disposition and final disposition.

[5] The Minister filed its Notice of Application on December 3, 2014 having taken Z. C. and B. C. into the care of the Minister on December 1, 2014. The five (5) day interim hearing required by s.39 (1) of the *CFSA* occurred December 5, 2014 and as required, was completed within thirty (30) days on December 29, 2014. The children's care was entrusted to the Minister as a result of the interim hearings.

[6] The court entered a protection finding on February 23, 2015. The first disposition order was made May 19, 2015. Reviews of the disposition order occurred on August 10, 2015 and November 9, 2015. Temporary care of the children was entrusted to the Minister throughout.

Protection Concerns

[7] With its notice of motion for a disposition order filed on May 13, 2015, the Minister filed the agency plan for the children's care, which plan called for the children to remain in the temporary care and custody of the Minister. The Minister/Agency identified six issues of concern at that time. These concerns are consistent with those first raised in the original application filed by the Minister in December 2014. They are:

1. Substance abuse by K. C-S. [the mother]
2. Domestic violence involving K. C-S. and C. T. [father of B. C.]
3. Inadequate parenting skills
4. Anger/emotional regulation issues for K. C-S. and C. T.
5. Mental health concerns related to K. C-S.
6. Behavioural issues for the child Z. C.

[8] In the Minister's post hearing brief, the original protection concerns are enumerated as having been:

1. Parental conflict
2. Drug use
3. Inappropriate supervision and child care, and
4. Physical aggression towards the children

[9] Five additional concerns are also identified in the post hearing brief as relating to the Minister's current involvement:

5. Anger and emotional control issues
6. Inappropriate parenting
7. Domestic violence
8. Violence directed toward the child Z, and
9. Concerns during access

The Governing Legal Principles

Legal Principles

- outside date for conclusion of proceedings

[10] This proceeding commenced on December 3, 2014 (exhibit 1); by virtue of Section 45(1)(a), it is to be completed within 12 months of the 1st disposition. We are at the final disposition stage and beyond May 19, 2016, which was the outside date for completing all disposition orders i.e. for completing the proceeding. The time for completing this proceeding was extended by the court on the basis of an assessment of the best interests of the children.

[11] This final disposition hearing actually commenced in February 2016 but could not be completed before May 19, 2016.

- identifiable risk and burden of proof

[12] The Minister must establish on a balance of probability that the children are in need of protective services. The specific risks identified by the Minister are enumerated *supra* beginning at paragraph 7.

- options for this disposition

[13] Given that this proceeding is beyond the time limit for completion, there are only two available options for disposition outlined by section 42 of the *CFSA*. The court may (1) dismiss the Minister's case which will result in the children being returned to their mother; or (2) the court may order that the child(ren) be placed in the permanent care and custody of the Minister as provided by s. 42(1) (a) and s. 42(1)(f) respectively.

- criteria to be applied

[14] Section 2 (1) of the *CFSA* identifies the purposes of the *CFSA* to be the protection of children from harm; the promotion of the integrity of the family and the need to assure the best interests of children. Throughout its deliberations the court must have as its paramount consideration the best interests of the child(ren). This directive is contained in section 2(2) of the *CFSA*.

[15] The *CFSA* requires that the ultimate decision of the court when determining the appropriate disposition following this hearing be that which is in a child's best interests. (see *CFSA*, s.2(2), s.42(1)).

[16] When determining the best interests of a child, I am required by s.3(2) of the *CFSA* to consider fourteen enumerated circumstances, if deemed relevant. I am not prohibited from considering additional relevant circumstances. For ease of reference, I reproduce a list of those circumstances:

Best Interests of Child

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.

[17] Extensive evidence was received in this proceeding over several days in February 2016 and more over the summer of 2016. Expert reports were received; social workers evidence was also tendered. Extensive pleadings with detailed affidavits have been filed since the proceeding commenced in December 2014. Only one Respondent testified; K. C-S.

[18] In addition, extensive evidence from an earlier child protection proceeding (November 2012-March 2014) involving the child Z. and the Respondent, K. C-S. was offered by the Minister as permitted by s.96 of the *CFSA* (exhibit 1).

[19] This court is required to assess the evidence, to determine whether the Minister has met its burden of proof.

[20] Should the court terminate the *CFSA* proceeding and return the children to their mother? After considering the best interests of the children, I am satisfied on a balance of probabilities that returning the children to the mother would not be in their best interests.

[21] What relevant conclusions have been reached by the court on a balance of probabilities? This requires a critical assessment of the evidence as it relates to the circumstances that give rise to the alleged risk, conclusions as to whether a risk continues to exist and the merits of plans put forward for the children's care.

Position of the Parties

[22] The Respondent C. T. has not participated in this proceeding and does not

offer a plan for the care of either child.

[23] The other father, D.T. is a possible parent of the child Z. He only received notice of this proceeding near the conclusion of the evidence. He appeared on July 21, 2016 and testified that he was unsure if he was the father of the child Z. He also confirmed having visited the child when the child Z. was in the care of the Respondent, K. C-S.

[24] In any case, D.T. said he supported the plan of the Minister for permanent care of the child Z. He further confirmed he has no interest in participating in the subject proceeding.

[25] These circumstances are commented upon by me in a related decision, *Nova Scotia (Community Services) v. K. C-S. and C. T.*, 2016 NSSC 280.

[26] The Minister has asked that both children be found in need of protection and that the disposition be their placement in the permanent care and custody of the Minister. The Respondent K. C-S. argues that the children are not in need of protection and the proceeding should terminate and the children should be returned to her.

[27] The Minister relies upon the following sub-sections of the *CFSA*, as a legal basis for its application: s.22(2)(b), (e), (g), (h), (k) and (ja). Any one of these may be the legal basis for an order for permanent care and custody. For ease of reference, they are produced below. Since s.22(2)(a) and (f) are referenced in (b), (g) and (ja) respectively, they too are reproduced:

s.22(2) A child is in need of protective services where

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

.....

(e) a child requires medical treatment to cure, prevent or alleviate

physical harm or suffering, and the child's parent or guardian does not provide, or refuses or is unavailable or is unable to consent to, the treatment;

(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the condition;

.....

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

(ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j);

.....

(k) the child has been abandoned, the child's only parent or guardian has died or is unavailable to exercise custodial rights over the child and has not made adequate provisions for the child's care and custody, or the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child's care and custody;

.....

The Children

[28] Subject to a number of statutory tests, this proceeding is to determine the best

interests of two very young children, Z., who will be four (4) years of age this month and B., who will soon be three (3) years of age.

- the child Z., d.o.b. November 15, 2012

[29] Z. was first removed from her mother's care at birth and remained in foster care for the next sixteen (16) months. She was returned to her mother March 31, 2014, days after the child B. was born. From March 2014 – December 2014 both children resided with their mother, after which time they were removed from their mother's care.

- the child B., d.o.b. March 27, 2014

[30] As stated, the child B. continued in her mother's care following her birth on March 27, 2014 until December 1, 2014 when she and her sister were placed in the temporary care of the Minister of Community Service. They have remained in temporary care to this day.

- the child D., d.o.b. February 27, 2008

[31] The child D. is not a subject of these proceedings. He was the subject of the Minister's involvement in late 2011. D. is the oldest child of K. C-S. and was voluntarily placed with his maternal grandmother by the Respondent K. C-S. That arrangement, the court learned, is now the subject of a separate child protection proceeding.

The Evidence from the 2012-2014 proceeding involving the child Z.

[32] As stated, the Minister was permitted pursuant to s.96 of the *CFSA* to adduce evidence from the earlier child protection proceeding involving both K. C-S. and the older child, Z. As stated, Z. had been placed in the care of the Minister but was returned to his mother in March 2014, days after B. was born and the child protection proceeding involving Z. then terminated.

[33] From the earlier proceeding, evidence of a number of witnesses was introduced into this proceeding. These witnesses included Nadine Marr, a child protection worker and caseworker for K. C-S.; evidence of a second caseworker for K. C-S., Dawn Clark, was also offered; evidence of the caseworker supervisor for K. C-S., Paul Macdonald was offered and the report of Dr. Landry containing a psychological assessment of K. C-S. was also offered.

[34] These records are part of exhibit 1. (Note, exhibit 'A' to the affidavit of Ms. Marr at tab 1 is removed.)

[35] In her affidavit filed November 21, 2012, in support of the application following Z.'s birth, Nadine Marr repeated earlier and ongoing reports of drug use involving C. K-S. and the child D.; domestic violence involving C. K-S. and her uncle which involved a physical altercation and property damage; unstable residences for the Respondent; a physical altercation with another woman; and violence in her relationship with her partner at the time; Mr. T. Police involvement was the norm.

[36] On October 26, 2012 the Respondent was arrested for domestic violence and uttering threats to her boyfriend; who was also charged with assaulting her. At the conclusion of the November 15, 2012 risk management conference the Minister decided to take the new born child Z. into care.

[37] The agency did take the child into care. Over the following months progress by the Respondent was noted (tab 2 of exhibit 1-the agency plan). In his November 7, 2013 psychological assessment of parental capacity (tab 5 of exhibit 1) Dr. Landry stated the Respondent appeared to be making progress in assuming an adult identity and in putting the needs of the child first. He concluded she had the parental capacity to care for the child Z. but given her cognitive limitations would benefit from ongoing support.

[38] Dr. Landry says a parent's individual issues can have a profound development effect on a child in that person's care (p.6) and further that a parent's affective responses form a critical part of a child's environment (p.9).

[39] In the Minister's affidavit and agency plan filed January 30, 2014 (tab 7 of exhibit 1) Ms. Dawn Clark called for the commencement of overnight time

between the child Z. and the Respondent with the objective being the return of the child and termination of the Minister's involvement . At this time Ms. C. K-S. was pregnant, carrying the child B.

Evidence in the Current Proceeding

[40] As stated, oral evidence during this stage of the proceeding known as the final disposition stage or less formally as the permanent care hearing phase of the child protection proceeding, commenced in February 2016 before Justice Kenneth C. Haley and continued before me in June and July 2016. Post hearing, written submissions were received by me in August and late September 2016.

[41] In this permanent care hearing, the court heard from *inter alia* police officers; foster parents; access facilitators; home support workers; the principal social workers and K. C-S.

Sequence of Evidence Summary

- police officers

[42] Several police officers testified they were involved in the life of K. C-S. because of incidents of violence, disturbance and generally emotionally charged circumstances.

[43] Constable Campbell testified that he attended at the residence of the Respondent C. T. on November 30, 2014 because of complaints of a disturbance at that location in the presence of the children. C. T. was reported to be the main aggressor in this disturbance.

[44] Constable Morrison was called to K. C-S.' residence at 9:00 a.m. on December 1, 2014. K. C-S. was attempting to remove belongings from the residence of C. T., the Respondent. When C. K-S. discovered she could not enter the premises, she reacted angrily in the presence of the children. She threatened to kick in the door and was cursing and yelling.

[45] Constable Melski was also present on December 1, 2014 and testified that K. C-S. was dragging a child and threatening to bust the door. He said she was irate, screaming and cursing. He testified that his involvement with the family at this time also resulted in a complaint by C. T. that he had been assaulted by K. C-S. As a result, K. C-S. was charged.

[46] Constable Wintermans of the Cape Breton Regional Police testified that he visited the residence of C. T., the Respondent, in response to a disturbance being reported. He found the Respondents arguing. C. T. alleged she assaulted him and she reported multiple assaults by him on her. C. T. was charged as a result of the investigation.

[47] Sheriff Todd McCrae testified as to an incident in the foyer of the Courthouse, outside the Courtroom where this proceeding was scheduled to begin. The incident report (exhibit 12) details disruptive behaviour by the Respondent, K. C-S. The court proceeding was adjourned from a 10:00 a.m. start to 2:00 p.m. on June 21, 2016 as a consequence.

- Dr. Aldridge

[48] The court also heard from Dr. Aldridge, a psychiatrist employed by the Cape Breton Healthcare Complex. His report is dated November 25, 2015 (exhibit 5). Dr. Aldridge works in the area of child/adolescent mental health services. Both he and Dr. Lynk cared for the parties' older child Z.

[49] Dr. Aldridge states *inter alia*:

The clinical picture fits with her life experience. The major challenge of her aggression fits with exposure to aggression. Post trauma states in young children appear often as otherwise unexplained aggression.

[50] In addition, in his oral evidence, Dr. Aldridge expressed concern about the number of changes in placement or care gives the child Z. has had to accept. He testified a child can be traumatized by too many changes. Dr. Aldridge acknowledged in cross examination that his opinions must be considered with a limitation, which is that his involvement did not permit a full picture of the child's current and past life to be determined. He did a two (2) hour in person assessment of the child and relied on other

files. He concluded the child Z. will present parenting challenges because of the disruption in her early life, including the disruption as a consequence of being taken into care and moved among placements.

-Deane Matheson-Fuller, clinical social worker

[51] The court also heard from Deanne Matheson-Fuller, a social worker/clinician working in the same unit as Dr. Aldridge. Her reports dated October 9, 2015; November 4, 2015 and November 6, 2015 are marked exhibit 6.

[52] Ms. Matheson-Fuller's notes record that the child Z. exhibited a "wicked temper", could be impulsive and aggressive and that the child's behaviour is poor after returning from a visit with the child's mother. In her reports poor attachment is identified as an explanation for Z's behavioural issues.

- Dr. Andrew Lynk

[53] Dr. Andrew Lynk, a Pediatrician filed reports (exhibit 8) and also gave oral evidence concerning the child Z. His written reports cover the period August 9, 2013 to January 21, 2016. Dr. Lynk sought the input of IWK professionals.

[54] Dr. Lynk's initial involvement was to assess the child's very poor social interaction; given the child had no interest in human faces, was not smiling responsively or cooing. Initially, Dr. Lynk was concerned the child had autism. By May 2015, developmental concerns included delayed expressive language and aggressive behaviour. Dr. Lynk's May 21, 2015 letter to Dr. Zemerli says the child's lack of eye contact was no longer a concern. However, in his August 28, 2015 letter, Dr. Lynk identified the child's obsessive behaviour as a concern.

[55] In his January 21, 2016 letter to Dr. Zemerli, Dr. Lynk saw his involvement as related to the child's "delayed expressive language and very aggressive hyperactive and disruptive behaviours". Dr. Lynk repeats the observations of others about the child Z. He recommends behavioural management of her. He believes the child will have significant behavioural issues as she gets older.

- case aides

[56] The role of case aides is to transport children to access visits, to monitor visits and to record observations of the interaction between the children and parent(s). Those observations also include recording the level of preparation of a parent for a visit. The case aide reports offered in evidence are the following:

- Exhibits 2 and 11 contain the case reports of Joanne McCormick for the period July 15, 2015 to December 18, 2015 and February 26, 2016 to May 24, 2016 respectively. Ms. McCormick testified February 10 and June 21, 2016.

- Exhibit 3 contains the case reports of Darryl Babstock for the period June 29, 2015 to January 18, 2016. Exhibit 4 contains the case reports of Darryl Babstock for the period July 20, 2015 to January 18, 2016. Mr. Babstock testified February 10, 2016.

- Exhibit 7 contains the case reports of Narah Comstock for the period December 30, 2014 to February 19, 2015. Ms. Comstock testified February 11, 2016.

- Exhibit 9 contains the case reports of Tracey Penticost for the period May 31, 2016 to June 16, 2016. Ms. Penticost testified June 21, 2016.

- Joanne McCormick - case aide

Ms. McCormick observed Ms. K. C-S. with one or both children. Ms. McCormick's observations of the Respondent are recorded in exhibit 11 and pertain to the period February to May, 2016. These observations were often made in the course of the transport of the Respondent to and from Port Hawkesbury; where she would see the child B. Other visits with the child Z. alone or with the B. occurred at the Pier House in Whitney Pier. Her notes dated March 4, 2016 (exhibit 11) report an angry and loud exchange between the Respondent and her mother in which the Respondent is heard to be threatening violence against a third party. The notes of the March 4, 2016 access trip to Port Hawkesbury also record observations of the Respondent as, on occasion, slow moving and showing indices of reduced functioning. In the course of her conversations with Ms. McCormick Ms. C. K-S. relates angry exchanges she has with others. This

evidence is very concerning given the circumstances in which it was gained and because it is relatively current.

- Darryl Babstock - case aide

[57] Mr. Babstock testified on February 10, 2016. He observed many visits involving the child Z. and the child B. His notes are marked exhibit 3 &4. The visits involving B. commenced December 16, 2014 but he had worked as a case aide involved with Z. for more than two years by that point. In total, he had been involved in fifty (50) visits involving one or both children.

- Narah Comstalk - case aide

[58] Ms. C. K-S. took the bus to Halifax to visit the child Z. and she would stay at a local hotel.

[59] Ms. Comstalk acted as an access facilitator beginning December 30, 2014 to February 19, 2015. Her detailed notes are marked exhibit 7. They describe circumstances of the access visit with Z. at the Atlantica Hotel during this period. For example on February 19, 2015 Ms. C. K-S. was preoccupied and distracted by her interest in a man she met the previous day at the hotel. The notes reveal that also during that week the Respondent had been in conflict with the dining room manager because she chose to disregard his directions about removing food from the restaurant buffet and taking it to her room. A week earlier she had been in conflict with other hotel staff. This is additional evidence of poor emotional regulation by K. C-S.; her lack of judgment and propensity for conflict.

[60] The notes reveal other incidents of socially unacceptable behavior by the Respondent and her varying levels of interest in the child Z.

- Tracey Penticost - case aide

[61] Ms. Penticost testified on June 21, 2016. Her notes are marked exhibit 9 and pertain to access visits at Pier House in Whitney Pier, in June 2016, between C. K-S. and one or both children.

- social workers

[62] Five social workers having similar duties testified. The court heard from Nadine Marr, an intake social worker; Paul Mugford, a child protection worker and Jennifer MacNeil, a temporary care worker.

[63] The court also heard from Dawn Manley (formerly Clark), the principal social worker with responsibility for the family, and the child protection file in particular. Finally, the case supervisor Melanie Martel explained her administrative and supervisory role as it pertained to many of these social workers.

- Nadine Marr - intake social worker

[64] Ms. Marr's affidavit is at tab 1 of exhibit 1. This affidavit was prepared and filed November 21, 2012 in support of the first child protection proceeding involving Z. In early 2012 she had been in contact with K. C-S. because she learned K. C-S. might be pregnant. Ms. Marr was assured by K. C-S she was not and Ms. Marr discontinued contact. Ms. Marr later learned that the Respondent was pregnant and she offered support to her. Ms. Marr met both K. C-S. and the child's father C. T. in September 2012, months prior to the expected delivery date.

[65] At the time, Ms. Marr reported concern about domestic violence, marihuana use and unstable housing for the family. Allegations of domestic violence once again surfaced in October 2012. K. C-S. was charged with assaulting her partner, C. T. The child Z. was born November 15, 2012 and immediately taken into care.

[66] Early in the initial proceeding, in February 2013, Ms. Marr ended her involvement in the file and transferred the file to a long term social worker, Dawn Manley (formerly Clark).

- Dawn Manley (formerly Clark)

[67] As stated, Ms. Manley is the social worker principally responsible for this family. She offered evidence in the first proceeding involving the child Z. (exhibit 1 at tabs 2, 3,

4, 7, 8 & 9). Parts of her affidavit evidence were the subject of an objection by counsel for K. C-S. The disagreement was resolved by an acknowledgement that although the affidavits contained admissible evidence, many of the objections were relevant to the weight to be given Ms. Manley's evidence by the court.

[68] Ms. Clark (now Manley) also offered affidavit evidence in this proceeding. (exhibit 10 at tabs 1, 2 & 3). On December 5, 2014 the Minister sought an order to require *inter alia* (1) both Respondents to engage in drug testing (2) that they not be using drugs when in a child care role and (3) that the parents abstain from the use of non prescriptive drugs and from alcohol.

[69] In her affidavit accompanying this application Ms. Clark referenced a May 18, 2014 referral from the police related to a domestic dispute with Mr. T.; a second police referral was received July 27, 2014, again related to a domestic disturbance and involving both Respondents. In September 2014 Mr. T.'s sister called to express concern that K. C-S was again using drugs and she had seen her call the child Z. names and observed her flying off the handle. The same sister complained about the suitability of her brother as a child care giver.

[70] On September 9, 2014 an income assistance worker reported that K. C-S. had called his office screaming and making demands . She was allegedly slurring her speech and the children could be heard in the background. On September 15, 2014 there was another police report of disturbing behaviour by Ms. C. K-S. Ms. Clark's affidavit provides other examples of out of control, volatile behaviour by Ms. K. C-S. and circumstantial evidence of drug use and neglect of the children.

[71] In her affidavit and plan for care filed almost six (6) months after this proceeding began, on May 13, 2015 Ms. Clark, in support of the first disposition order, detailed concerns about ongoing drug use; volatile behaviour including more yelling and cursing and domestic conflict involving K. C-S. and C. T., the other Respondent.

[72] In her August 2015 affidavit accompanying the review application pertaining to the May 2015 disposition order Ms. Clark served notice that the Minister was now seeking permanent care of the children because of Ms. K. C-S.'s inability to see the risk her life style presented to the children. (see plan of care at the last page) The affidavit says she refused to access services; denied her personal issues; had an angry disposition and ongoing unhealthy relationship with C. T, the Respondent.

- Paul Mugford - child protection worker

[73] Mr. Mugford described being present at the home of K. C-S. on January 7, 2016 to investigate concerns related to K. C-S.' oldest child D. (d.o.b. February 27, 2008). He was accompanied by the police who were to provide assistance, if necessary, to take D. into care. At the time, D. was in the care of his maternal grandmother. As noted earlier, D. is the subject of another proceeding.

[74] K. C-S. was upset and verbally abusive to Mr. Mugford and the police, all in the presence of the child D.

- Jennifer MacNeil - temporary case worker

[75] Ms. MacNeil's role is to ensure necessary services are in place for a child subject to a protection proceeding. Ms. MacNeil has not met K. C-S. Ms. MacNeil explained the Minister is seeking permanent care of the two children with a view to having both adopted in the same or separate homes.

- Melanie Martell

[76] Ms. Martell met K. C-S. only once, on May 1, 2016. She was involved in this family as a supervisor of various social workers responding to the circumstances of the subject children. Ms. Martell and K. C-S. spoke May 6, 2016 at which time K. C-S. swore at her. She later saw K. C-S. at McDonalds with C. T., the other Respondent, a person with whom K. C-S. was not to have contact at that time.

[77] Ms. Martell's affidavit evidence is located at tab 4 of exhibit 10.

- foster parent – E.M.

[78] E.M. testified February 12, 2016. She cared for the child Z. for the first fourteen (14) months the child was in temporary care following birth. She confirmed the child had some unusual behaviours and confirmed the child was being followed by Dr. Lynk.

[79] E.M. confirmed remaining informally involved with Z. after the child was returned to her mother in March 2014. She took Z. once per week and cared for her.

[80] E.M. confirmed that K. C-S. expressed concern about her ability to care for both of her children. E.M. said she observed a significant deterioration in Z's behaviour after being returned to her mother's care.

- family support worker - Michelle MacLean

[81] Ms. MacLean testified February 12, 2016.

[82] Ms. MacLean has more than eighteen years experience as a family support worker. Her role is to assist parents to be better parents. This often involves giving advice, guidance and support in the areas of anger management, stress management and parenting, including nutrition education and appropriate discipline. She began her involvement with K. C-S. in May 2015.

[83] Ms. MacLean testified that it was necessary to educate K. C-S. about empathy and the negative effects of domestic violence and household conflict on a child's wellbeing. Ms. MacLean stated that initially K. C-S. did not believe she needed to take an anger management course. Nor did she appreciate the effect of addictions on families.

Evidence of K. C-S.

[84] K. C-S. testified last in the proceeding. Her plan for the two children is to have them returned to her, to be cared for by her until they begin school. She offered photos of her residence to support her claim that she has appropriate accommodations for herself and the children and can care for them. At the time of her evidence, K. C-S.'s mother was living with her.

[85] Frequently throughout her testimony, K. C-S. cried, was emotional and at times, defensive. She presented as incapable of managing emotionally. Even allowing for the effects of this stressful proceeding on her emotional stability, her presentation is a concern for the court.

[86] She testified that she is prescribed a mood stabilizing medication. Notwithstanding this medication, she clearly has difficulty maintaining a stable mood.

[87] On June 21, 2016; the morning start of the day's proceedings was not possible because of behaviour exhibited by K. C-S. prior to the presentation of evidence. These events are described in exhibit 12. The hearing ultimately commenced at 2:00 p.m. A further break was required in the afternoon after K. C-S. stormed out of the courtroom.

[88] At other times, in the course of her oral evidence, K. C-S. demonstrated a lack of insight into her short comings, both as an individual and as a parent. Although she agreed with the suggestion that she had an impulse control problem and an anger management issue, she tended to explain her lack of control as an understandable response to the demands and pressures the Minister of Community Services has placed upon her.

[89] She agreed that her poor impulse control has resulted in her cursing, yelling, arguing and being uncooperative with social workers and related staff. This has included telling a social worker "to go f. herself".

[90] It is sadly telling that between the court appearances on June 22 and July 12, the day she testified, she attended only one access visit. In the course of cross examination, counsel for the Minister offered a text exchange between K. C-S. and an access worker, Mr. Babstock, dated June 28, 2016. In that text, K. C-S. confirmed that she refused to go to access on June 28 because she was hungry and wanted the access visit to occur at McDonalds, where she could get something to eat. She refused other access visits after June 22 because they were to occur at the office of the Minister of Community Services and not in a more comfortable setting such as a park, the Pier House or in a similarly equipped location.

[91] In her affidavit filed February 4, 2016 (exhibit 14), K. C-S. acknowledges her relationship with C. T. to have been unhealthy, characterized by jealousy and conflict. She confirms having attended parenting programs and as having been assessed for anger management, as testified to by Ms. Headley-Boutilier (exhibit 13). She confirmed having received the care of Dr. Waheed Laural, a Psychiatrist and she confirmed her diagnosis as having a behavioural disorder for which she is prescribed Welibutrin.

[92] K. C-S. concedes having been in a number of abusive relationships. She says she was in foster homes from the age of ten (10) onwards. She was involved, as a parent, with the Minister of Community Services (Child Protection) prior to November 2012. In 2012, when the proceeding related to her then new born child Z. began; her first child D. had already been placed with her mother D.

[93] As stated, coincidental with this proceeding, K. C-S. is involved in another child protection proceeding involving her oldest child D. As stated, this child had been in the care of his maternal grandmother but was again taken into care in January 2016. K. C-S. confirmed in cross examination that her involvement in that proceeding has resulted in her experiencing strong negative emotions. She also confirmed having confronted the Minister's counsel in that proceeding, in a way I describe as angry and aggressive.

Conclusion re: K. C-S.

[94] The Minister asks the court to place permanent care of both children with the Minister of Community Services. The basis for that position was identified in the pleadings and is outlined *supra*, beginning at paragraph 7.

[95] The Minister argues the circumstances giving rise to the risk to the children if left in K. C-S.'s are pervasive, long standing and services have either been unsuccessful in reducing the risk or services have not been accessed to the appropriate level. I am satisfied on a balance of probabilities that this is the case.

[96] The Minister points to the issues with the Respondent's first child D. who was eventually placed with his maternal grandmother; then the circumstances that resulted in the child Z. being taken into care as a new born in November 2012 and both Z. and B. being taken into care in December 2014 when this proceeding was commenced.

[97] The minister emphasizes the Respondent's instability in terms of her lifestyle; her emotions; her propensity to find herself in unhealthy relationships and in situations involving domestic violence and her associated inability to put the needs of her children first. All of the foregoing, in the eyes of the Minister will continue and if the children are returned to her care will create an unacceptable risk for the children and returning the children to her is not in their best interests.

[98] Counsel for K. C-S. argues much of the evidence offered by the Minister is hearsay and unreliable and should not form the basis for adverse conclusions about the suitability of the K. C-S. as a parent. He also challenges the reliability of various reports made to the Minister by Mr. T.; the other Respondent; which reports are the basis for conclusions that she is using drugs; neglecting the children; prone to violence and not capable of caring for the children. I have considered those arguments and weighed the evidence accordingly.

[99] The Respondent's counsel points out that the developmental concerns related to Z. can't be attributed to the Respondent because the child has been in foster care for much of her life and therefore could not possibly be attributed to the Respondent's care or lack thereof. Finally he observes that for the most part the observations of the access supervisors and case aides are mostly positive.

[100] The conclusions I must draw, I do so on a balance of probabilities. There is no certainty. In coming to my conclusions, I have considered all of the evidence before the court, both that which has been presented in affidavit form and that which has been presented orally. I have also considered the able submissions of counsel. Even though I may not make specific reference to the evidence of a witness or a piece of evidence, I confirm the evidence has been considered.

[101] K. C-S. loves her children. Hers is a story of child protection concerns that now involve the next generation; her children. She experienced life as a foster child and now all three (3) of her children have as well, in one form or another.

[102] K. C-S. has trouble functioning as a productive member of society. She is broken and deals with life's challenges from a position of significant disadvantage.

[103] These disadvantages impair her ability to parent to such a degree that it is now in the best interests of the two subject children to not be in her care. They must be protected from her reality. K. C-S. is incapable of meeting the responsibility of parenting these children to an acceptable level. She has great difficulty even managing herself.

[104] She remains emotional volatile; inclined to unhealthy relationships and will continue to be involved with police authorities. These are the long standing characteristics of her adult life and they will continue to be. The children are in need

of protection as defined by s.22(2) of the *CFSA*.

[105] The pressures and responsibilities of parenting are more than she can manage.

[106] She displayed an inability to control her anger and to emotionally regulate in this proceeding. I am satisfied this will continue. A number of witnesses have testified that they observed this failing. K. C-S. has mental health issues that require a response and which put the subject children at risk. The children exhibit the effects of having been exposed to the chaotic life of K. C-S. The foregoing issues will also give rise to recurring domestic violence in her life.

[107] For all of the foregoing reasons the Minister's application for permanent care and custody of the subject children is granted.

O'Neil, ACJ