SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: *Nova Scotia (Community Services v. P.M.*, 2017 NSSC 261

Date: 2017-10-10
Docket: SFH CFSA 093971A
Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

PM and JL

Respondents

Judge:	The Honourable Justice R. Lester Jesudason
Heard:	August 16, 2017
Written Decision:	October 10, 2017
Counsel:	John Underhill for the Minister of Community Services Nicole MacIsaac for PM JL, self-represented

Restriction on publication:

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

Section 94(1) provides:

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

By the Court:

1.0 Introduction

[1] The Minister of Community Services seeks an order for permanent care and custody of an almost three-year-old, child, N, and for his parents, PM and JL, to have no access to him.

[2] The permanent care application is made under section 47 of the *Children and Family Services Act* (*CFSA*). Given that this proceeding was started on December 1, 2014, it is governed by the version of the *CFSA* in place prior to it being amended in March 2017.

[3] PM and JL ask to have N placed in their care. PM has advanced a plan to this effect. JL has not advanced an independent plan but supports PM's plan.

2.0 Background

[4] N was removed from the Respondents' care at birth in November 2014. He was found to be in need of protective services on February 23, 2015, by Justice Mona Lynch who was the judge originally assigned to this file.

[5] The first Disposition Order was granted by consent on May 20, 2015, so all disposition orders in relation to N were to have terminated by May 20, 2016. However, on May 18, 2016, the existing *CFSA* proceeding was terminated by consent and a second proceeding was commenced (a so-called "rollover"). Consequently, all disposition orders in relation to N in relation to the new proceeding were to terminate on or before May 18, 2017. Another colleague of mine, Justice Carole A. Beaton, presided over the termination and rollover due to Justice Lynch's departure from the Supreme Court Family Division.

[6] I subsequently agreed to take over carriage of this file given that I had been presiding over a separate *CFSA* proceeding involving the Respondents and their younger child, S. In my view, it made sense for one judge to handle both files.

[7] On January 27, 2017, the Minister moved for an Order for permanent care and custody in relation to both children. Permanent care trials in relation to both children were scheduled from May 15th to 19th, 2017. However, shortly before the trial, the Respondents discharged their former counsel. PM then retained her current counsel who indicated that, due to her recent retainer, she was not in a position to conduct the trial. All parties indicated, however, that they would be willing to participate in a judicial settlement conference and one was scheduled for May 17, 2017. At that settlement conference, the parties agreed:

> A family placement for S would be pursued with PM's foster sister and husband who lived in New Brunswick. The Minister would not oppose this family placement and it was contemplated that the *CFSA* proceeding would be terminated and an order for the proposed family placement for S would be issued under the *Maintenance and Custody Act*. Given that PM's foster sister and husband were going to be out of the country from May 28th to June 4th, 2017, the existing order for temporary care and custody for S was renewed by consent until June 5th.

> It was also agreed that the permanent care trial in relation to N would be commenced but, given the unique circumstances, it was in his best interests that the trial be adjourned and completed in no less than six months from May 17, 2017.

[8] The parties appeared before me following the settlement conference on May 17, 2017, As agreed, the trial was started and then adjourned. Rather than see the trial delayed to the maximum contemplated six-month extension, I indicated that I would accommodate the trial's continuation during my summer "emergency docket" and provided trial dates of August 16, 17, 18, 21 and 22, 2017.

[9] On June 5, 2017, the parties and PM's foster sister appeared at which time the child protection proceeding involving S was terminated by consent contemporaneously with an order being granted under the *Maintenance and Custody Act* giving care and custody of S to PM's foster sister and husband. Access between the Respondents and S was to be at the discretion of PM's foster sister and husband.

[10] On July 20, 2017, another settlement conference was requested which was subsequently held on August 9, 2017. While the parties did not reach agreement as to what would ultimately happen to N, they did agree that the trial would be conducted as follows:

- The Minister's evidence would be admitted by consent of all parties, without the need for cross-examination;
- PM's evidence would be admitted by consent of all parties, without the need for cross-examination;
- JL's two affidavits filed in the other *CFSA* proceeding involving S, would be admitted by consent of all parties, without the need for cross-examination;
- The qualifications of the Minister's expert witnesses were agreed on;
- The parties agreed that should I grant the Minister's application for permanent care of N, the Minister would recommend, to any adoptive parents, that a relationship between N and S be maintained, if possible, although it was anticipated that the children would reside in different homes and provinces.
- No oral submissions would be made at the trial. The Minister would rely on her pre-trial brief filed on July 19, 2017, PM's counsel would file a pre-trial brief before the trial and JL would not be filing any brief.

[11] On the scheduled first day of the trial, August 16, 2017, counsel for the Minister and PM appeared. Neither Respondent appeared. Counsel for PM indicated she was prepared to proceed in PM's absence.

[12] Given that JL was a self-represented litigant, I expressed some concern about proceeding in his absence; however, both counsel indicated they felt it was appropriate to do so given the parties' prior agreement as to how the trial would be conducted.

[13] Despite that agreement, I indicated that given what was at stake in this proceeding, and the fact that JL was self-represented, I would be inclined to allow him the opportunity to make oral argument as to what should be done with N. The Minister's and PM's counsel indicated that they had no difficulty with this. Thus, I agreed to proceed with the trial in accordance with the process agreed to by the parties on the condition that, if JL wished to say anything to me as closing argument, I would give him until August 22, 2017 (i.e. the last day originally set for the trial) to do so. Otherwise, it would be assumed that he did not wish to say anything further and that he was content to let me render my decision.

[14] I subsequently prepared a Trial Memorandum summarizing the discussions which occurred on August 16, 2017. It was sent out to all parties on August 17, 2017. JL was personally served with the Trial Memorandum. No request was subsequently made by JL to say anything further to me before I rendered my decision.

3.0 Issues

[15] There are two issues:

1. First, I must decide what plan of care is in N's best interests.

2. If I decide that it is in N's best interests that he be placed in the permanent care and custody of the Minister, I must decide whether the Respondents should be granted post-permanent care access to him.

4.0 The Law

[16] The purposes of the *CFSA* are to protect children from harm, to promote the family's integrity and to assure children's best interests: subsection 2(1).

[17] In *CFSA* proceedings, the children's best interests are paramount. At different points in a child protection proceeding, the *CFSA* directs me to consider "the best interests of a child" when making an order or a determination. When that happens, subsection 3(2) dictates that I consider those enumerated circumstances which are relevant. I broadly group them into five general areas of consideration: the child's existing relationships; the child's present needs; the child's preferences if they are reasonably ascertained; future risk; and other relevant circumstances.

[18] This is an application for a final disposition order. The statutory deadline has already been exceeded. I am required to consider the best interests of N. The only options open to me under subsection 42(1) are:

(a) Dismiss the matter and return N to the care of PM and JL;

or

(b) Place N in the agency's permanent care and custody.

[19] Justice Saunders in ***Children's Aid Society of Halifax v. B.(T.)***, 2001 NSCA 99, describes the limited options available to me once the maximum time limits are reached in paragraph 19 as follows:

> As the proceeding nears a conclusion, the opportunity to grant disposition orders under s. 42(1)(c) diminishes until the maximum time is reached at which point the court is left with only two choices: one or the other of the two "terminal orders". That is to say, either a dismissal order pursuant to s. 42(1)(a) or an order for permanent care and custody pursuant to s. 42(1)(f).

[20] As well, at paragraph 25 of that same decision, Justice Saunders noted that "temporary placement with a relative, neighbours or other extended family is no longer available" once the maximum time limit is reached, so this cannot be considered.

[21] In the present case, no alternative third party placement option for N was presented to me by the Respondents by the time this trial recommenced on August 16, 2017.

Burden of Proof

[22] The Minister bears the burden of establishing on a balance of probabilities that N continues to be in need of protective services and that a permanent care order is in his best interests.

5.0 Analysis

5.1 The Child, N

[23] N is going to be three in November 2017. He has been in the Minister's care his entire life. Part of the reason why he has been in the Minister's care this long is because the parties agreed to a rollover in May 2016.

[24] N is reported to be doing well in his current foster placement. Until S's placement with PM's foster sister and husband, N and his younger brother, S, lived in the same foster home.

[25] The Respondents' access visits with N were fully supervised until the end of November 2015, when the level of supervision was reduced to partial supervision. However, following new concerns in relation to the Respondents' which arose in December 2015 which led to S being taken into the Minister's care at birth, access visits by the Respondents to both children reverted to being fully supervised.

5.2 The Minister's concerns

[26] The Minister alleges that N is in need of protective services under subsections 22(2)(b), (g) and (ja) of the *CFSA*. Without reproducing those subsections, they relate to allegations that there is a substantial risk that N will suffer physical and emotional harm as described in those subsections. "Substantial risk" means a real chance of danger that is apparent on the evidence: subsection 22(1).

[27] The Minister summarizes her most relevant concerns as:

(a) PM and JL have three older children independently, and a younger child together, who have never been in either of their care. These children were the subject of prior child protection proceedings which resulted in them being placed in the Minister's permanent care and custody or in the care and custody of other individuals;

(b) JL's chronic substance use/abuse;

(c) PM's level of cognitive functioning;

(d) JL's emotional/behavioural functioning;

(e) Ongoing conflict between the Respondents;

(f) Criminal/Police involvement; and

(g) Other issues involving concerning statements made by JL, and both Respondents not having consistent access visits with N.

[28] The Minister refers to various evidence relating to these concerns in her pre-trial brief which I summarize as follows:

(a) Four other children removed from the Respondents' care

[29] PM and JL each have three older children, not together, who were the subject of *CFSA* proceedings resulting in the children being placed in the Minister's permanent care and custody or with family members. The Respondents do not appear to be having any access with those children.

[30] As noted earlier, PM and JL together also have a fourth younger child, S, who was born in December 2015 who was taken into the Minister's care at birth. A *CFSA* proceeding was commenced and terminated with S being placed permanently with PM's foster sister and husband in New Brunswick. The Order placing S in their care leaves it up to them as to what access, if any, PM and JL can have with S. I have no evidence that the Respondents have had any access with S since that Order was granted.

(b) JL's chronic substance use/abuse

[31] The Disposition Orders issued by consent in this proceeding prohibited JL from using alcohol and non-prescription drugs. The Minister says that JL has failed to abide by these conditions and refers to testing which showed that JL continued to use marijuana during this proceeding. The Minister also refers to JL's admitting to using marijuana, alcohol and cocaine at various points in his life.

(c) PM's level of cognitive functioning

[32] The Minister relies on two psychological assessments done on PM to assert that PM has cognitive deficits which prevent her from safely parenting a child. The first psychological assessment was done by David Cox in October 2014. The second was done by Melissa Gendron in June 2016. I will refer to specific passages from these assessments later in my decision.

(d) JL's emotional/behavioural functioning

[33] The Minister refers to numerous instances in which she says JL has behaved erratically and exhibited questionable judgment. Because of same, JL was referred for a psychiatric assessment which was completed in June 2016 by a psychiatrist, Dr. Risk Kronfli. Again, I will refer to specific passages from that report later in my decision.

(e) Ongoing conflict between the Respondents

[34] The Minster asserts that PM and JL have repeatedly demonstrated that they have ongoing conflict with one another during access visits when they have been under the full supervision of Agency access facilitators. This includes calling each other "fucking idiots" and "fucking stupid" and taunting each other about their previous children not in their care. On one such occasion, JL was noted as calling PM "stupid" and moving her to tears.

[35] The Minister says that this conflict has been constant since N was first taken into care and demonstrates the Respondents' complete lack of insight and awareness that their behavior places N at risk of emotional harm. The Minister notes that while the Respondents received individual counselling, those services never progressed to the point where couples' counselling was felt to be feasible.

(f) Criminal/Police involvement

[36] The Minister says that JL's criminal behavior has been an ongoing child protection concern. She points to the fact that JL has been incarcerated at various times during this proceeding. For example, in July 2015, while bound by a Probation Order prohibiting him from consuming drugs or alcohol, JL was arrested on suspicion of impaired driving and he later pleaded guilty to refusal to provide a breath sample. More recently, he was convicted of driving without a license and was briefly incarcerated from November to December 2016.

(g) Other issues

[37] Toward the end of January 2017, JL began making concerning statements during access visits. For example, on January 25, 2017, he made a comment about a "vigilante" group in Halifax and spoke about gangsters and guns and "making a name for himself". He is alleged to have made comments about knowing someone in Mexico who had kidnapped his children and ran away with them to Mexico.

[38] In addition, after the Minister inadvertently revealed identifying information about N's foster parents in Agency recordings which were disclosed to the Respondents, JL was quoted by a case aide during an access visit on January 30, 2017, as having said, "I know their names

now…See what they have to say when their house goes up in flames".

[39] Because JL's comments were taken as possible threats, the police were called and spoke to the Respondents. Subsequently, for safety reasons, the Minister decided to move access visits back to the Agency's offices.

[40] After this, neither Respondent attended access visits for several weeks. In late May, PM requested that access visits resume. She attended one visit in June 2017 and cancelled a number of other visits, citing illness. JL has not seen N even once since late January 2017.

5.3 Respondents' Response to Minister's Concerns

[41] PM disagrees that the concerns raised by the Minister justify N being placed in the Minister's permanent care and custody. I summarize her responses to several of the Minister's concerns below.

[42] First, with respect to the Minister's allegations with respect to her cognitive functioning, she acknowledges that she has been treated for anxiety and depression, but denies having any untreated mental or emotional impairments that impact on her ability to safely and adequately parent N. To the contrary, she says that she and JL have made appropriate arrangements for N to be returned to their care including having all the necessities required to look after him, and making daycare and preschool arrangements for N near their home.

[43] PM says she and JL are "just regular people". She says she has a reliable support network and will continue to participate in and take advantage of many of the programs offered by the Dartmouth Family Centre (DFC).

[44] Her claims of continued involvement with the DFC are supported by Kelly Edwards who submitted an affidavit sworn to on June 28, 2017. Ms. Edwards is employed as a home visitor in the DFC's Enhanced Home Visiting Initiative and has had regular contact with the Respondents since July 2014. This started initially through the ten-week pre-natal program offered by the DFC, and then through the Healthy Beginnings home visiting program. PM's file was closed in early January 2016, shortly after S was born but Ms. Edwards was able to continue to provide home visiting support to PM although Ms. Edwards says the work she was able to do was a lot less than normal given that the children were not in PM's care. Altogether, Ms. Edwards has been involved with the Respondents for approximately two and a half years. During that time, she indicated that their home was clean and tidy and she did not observe any obvious child protection concerns. Ms. Edwards further indicates that there are several programs that the Respondents have indicated an interest in participating in through the DFC should N be placed in their care.

[45] Second, with respect to the allegations of conflict between PM and JL, PM acknowledges that they have had conflict in their relationship and that they fight occasionally. However, she says that they have worked hard to address those issues in counselling and JL has never been physically abusive to her. She says they have a strong relationship despite the conflict and she will do everything she can to ensure that N is not exposed to conflict and understands that such exposure can have a significant and harmful impact on a child. She indicates that she and JL are engaged and plan to get married in the coming year.

[46] Third, with respect to the allegations of JL's alleged chronic substance use, PM acknowledges that JL does occasionally smoke marijuana; however, she says that she ensures that he does not do so in the home and that she will ensure that he does not do so around N should N be placed in their care.

[47] Fourth, with respect to JL's involvement with the police and criminal activity, PM says JL's incarceration from late 2016 resulted from incidents that occurred in 2015 when JL was driving without a licence. She says he has had no criminal or police involvement since then.

[48] Fifth, with respect to the Minister's "other issues", PM says that JL's comments about the foster family's home going up in flames were taken out of context. PM says she was present when the comment was made and that JL did not in any way threaten the foster family but was making a general reference to a movie he had seen where that incident had occurred.

[49] On the issue of their lack of consistent visits with N, PM says that when the Minister decided to move access visits to the Agency's offices in late January 2017, this created difficulty for her and JL to attend visits. PM says that it was difficult for them to travel by bus from their home to the Agency's offices and she was not provided with an access calendar.

[50] In summary, PM says that the Minister has not met the burden of establishing on a balance of probabilities that N continues to be in need of protective services or demonstrating that placing him in the Minister's permanent care and custody is in his best interests. She submits that N should therefore be placed in her and JL's care.

[51] JL did not file any independent affidavits relating to this proceeding. By agreement, two affidavits he filed in the proceeding involving S from January and February 2016 were admitted as evidence in this proceeding.

[52] In those affidavits, JL also acknowledges that there has been some conflict in his and PM's relationship but nevertheless suggests that his relationship with PM is a healthy one. He says that while he and PM have had arguments, they did not argue prior to the commencement of this proceeding. He suggests that their arguments have resulted from the stress due to the child protection proceeding and PM having a very difficult pregnancy with S.

5.4 The Evidence

[53] I have considered the parties' evidence, entered as Exhibits 1-10. This case largely does not turn on credibility of any of the witnesses. Furthermore, making specific credibility findings would be difficult given the parties' agreement to waive cross-examination of opposing witnesses.

[54] I do not find that all of the Minister's issues involving the Respondents give rise to the same level of concern when it comes to their ability to adequately parent N. However, when I weigh all the evidence and consider the requirements of the *CFSA* and the principles from the case law, I find that the Minister has met her burden of establishing that it is in N's best interests to be placed in the Minister's permanent care and custody. I come to this conclusion primarily for the following four reasons:

a) Unresolved conflict

[55] There is clearly unresolved conflict involving the Respondents which places N at a substantial risk of emotional harm. As noted, exchanges between the Respondents during fully supervised Agency access visits when N was present have involved them calling each other things such as "fucking idiots" and "fucking stupid" and taunting each other about their previous children not in their care. On one occasion, PM was reduced to tears after being called "stupid" by JL during a supervised Agency access visit.

[56] A further telling example of this conflict occurred during an access visit on January 24, 2016. The Agency access worker noted that PM said to JL, "It's because of you, I'm losing time with my sons". JL then replied, "I already told you, I don't want them to come home, if I have to be with you" and then told the access worker, "I'm always around stupid people." [Exhibit 2, Tab 18, Affidavit of Lori Muise, Paragraph 18 (l)]. Such hurtful statements made in the presence of a young toddler expose him to significant emotional harm in a very direct way.

[57] While I acknowledge that the Respondents have received some individual counselling, unfortunately, those services have never progressed to the point where couple's counselling was started. Thus, their parental conflict appears to be largely unresolved.

[58] Furthermore, to the extent there have been serious incidents of conflict between the Respondents when access facilitators were present, I am not satisfied that this conflict is simply due to the stresses of having the Minister involved in their lives and would suddenly end if N was placed in their care. To the contrary, given that the Respondents have engaged in such open and heated conflict during visits with the children which were supervised by access facilitators, I am extremely concerned about this conflict escalating should the Minister's involvement end with N being returned to the Respondents' care. Indeed, people often tend to behave better when subject to the scrutiny of others than when out of sight in the privacy of their homes. Unfortunately, these parents have been unable to avoid conflict even when others have been present to observe them interact with their children.

[59] The Respondents' underlying conflict is unresolved and is sufficiently serious that I do not believe it appropriate to place this very young child in their care, leaving him exposed to this emotional turmoil. Given his young age, N cannot realistically shield or protect himself from such conflict and, unfortunately, the Respondents do not appear capable of putting aside their conflict for the sake of N's emotional well-being.

b) Respondents' lack of insight into and minimization of child protection concerns

[60] The Respondents have not demonstrated a meaningful level of insight into the child protection concerns identified in this proceeding and have often sought to minimize same.

[61] For example, in his psychological assessment in relation to PM from October 2014 (Exhibit 2, Pages 27-46) David Cox concluded on p. 45:

> [PM]'s pervasive difficulties with judgment, decision making, and day to day

> function are the product of global cognitive delays. She would appear to meet the DSM-5 diagnostic criteria for an intellectual disability. Her cognitive and adaptive functioning deficits have prevented her making productive use of services and reliably attending access visits. Even if she did participate in counselling and Family Skills Worker contacts, her limitations would make it unlikely to make productive use of services. It is difficult for her to identify any supports or intervention which might resolve child protection concerns and enable [PM] to safely parent a child.
>
> …The outlook for improvement in [PM]'s circumstances and functioning, and for the resolution of child protection concerns, is very poor.

[62] Mr. Cox also stated on p. 46:

> No amount of parenting training will enable [PM] to handle many parenting situations, especially those which are unfamiliar or unanticipated, or make high demands in terms of independent reasoning and judgment. She would need to obtain and accept ongoing and readily available support and consultation to manage parenting situations which are especially challenging or beyond her capability. It will be important to determine if this level of support is a practical possibility.

[63] I recognize that David Cox's psychological assessment is close to three years old so is somewhat dated. However, Melissa Gendron's more recent psychological assessment of PM completed in June 2016 (Exhibit 4, Tab 2C, Pages 47-79) expresses similar sentiments. Specifically, Ms. Gendron stated:

> A thorough review of all available information…suggests that [PM] meets DSM-IV-TR's criteria for Borderline Intellectual Functioning. (Exhibit 4, Page 73)

[64] Ms. Gendron's clinical impression summary stated:

> It is also important to take into consideration [PM]'s level of insight as well as her approach to her current situation with the Agency…PM reported there was "no reason" why her children are in temporary care.
>
> …[PM] may not be holding herself accountable to aspects of her involvement with the Agency…may lack insight into the situation, and…may not appreciate the implications of her own behavior (i.e., the potential consequences of inconsistent attendance to Agency recommended counselling sessions)…Without recognition, [PM] will be less likely to make meaningful changes to her situation with the agency…(Exhibit 4, Pages 75-76)

[65] Various concerns had also been identified in relation to JL by Dr. Risk Kronfli who completed a psychiatric assessment of JL in June 2016 (Exhibit 4, Tab 1B, Pages 8-28). On page 19, Dr. Kronfli stated:

> [JL] minimizes the documented concerns of the Agency with respect to his lack of

> cooperation and difficult interactions with Agency workers. He states that while he tries to cooperate, he would like to be rid of the Agency's involvement in his life. He states that he craves a "peaceful life with no drama" and would like to move to a cabin in the woods where he can be alone with his family.

[66] On p. 24, Dr. Kronfli stated:

> While [JL] acknowledges that he has had lifelong anger management problems, he minimizes the extent of the difficulties that his anger has caused, including educational problems, relationship problems, problems with authority, and legal issues. Despite attending anger management training, [JL] does not appear to have gained any knowledge that would assist him in identifying his triggers for anger or ways to manage his anger after it has been triggered.

[67] On p. 26, Dr. Kronfli stated:

> …[JL] indicates that criminal involvement has become lifestyle norm for him and he minimizes the extent to which this involvement has affected his life.
>
> Demonstrating limited insight into the extent of his difficulties managing and coping on a day-to-day basis without becoming involved in criminal activity or being charged for an offence, [JL] is unable to assume responsibility for his actions and as a result, he…has challenges being able to remedy them. [JL's] insight into his situation is so limited that he states he would like to live in a cabin in the woods, where he would find peace and quiet; however, such a move would only contribute to his tendency to avoid situations where he perceives will have a negative outcome.
>
> [JL]'s long-standing, untreated diagnosis of ADHD has been a significant contributor to his problems. He demonstrates classic symptoms of ADHD which include impulsivity, reckless and risk taking behaviours, inability to focus, disorganization, low frustration tolerance, and anger management problems which have resulted in life long legal, employment, relationship, and financial problems. This also contributed to his involvement with substances.

[68] Finally, on p. 28, Dr. Kronfli stated:

> In order to resume day-to-[day] care of his children, [JL] would require an extended period of monitoring by the Agency to ensure that he engages in any services that are put in place in order to address his mental health issues and improve his parenting skills. Close monitoring would also ensure that [JL] follow through with the recommendations of the Agency and the treatment plan arising from his Psychiatric Assessment. If he does not adhere, or does not improve his functioning, the prognosis for him to become a safe, stable and consistent caregiver is compromised.

[69] JL has also directly made comments which show limited insight into the issues raised by the Minister. For example, on January 2, 2016, he was noted as making a comment to the effect

of, “If I was rich, I could do whatever I wanted to and keep my children. Nobody would care if I smoked weed”: Exhibit 2, Tab 18, Para. 18(b). Similarly, Dr. Kronfli noted:

> …during an addictions assessment on December 9, 2014…at Addictions Services, [JL] reported that he enjoyed using Cocaine and used approximately 3 grams every 2-3 weeks until approximately October of 2014. He indicated that if he was not involved with the Agency he would use Cocaine weekly. [Exhibit 4, Tab 1B, Page 21].

[70] In summary, I conclude that the Respondents have shown little insight into several of the child protection issues raised in this proceeding and have often inappropriately minimized the impact that these would have on N. Thus, I believe it highly unlikely that those issues would be addressed by them if I returned N to their care who, as a young toddler, would bear the brunt of those unresolved issues.

c) Respondents’ lack of engagement and commitment to addressing the issues

[71] My third major concern relates to the Respondents simply not consistently engaging in services or demonstrating the level of commitment to address the issues raised in this proceeding which would give me a sufficient level of comfort to return N to their care.

[72] JL has previously indicated an intention to use cocaine if the Minister was not involved in his life. Furthermore, while the intention was for joint couple’s counselling to occur to address their issues of conflict, it never progressed to the point where this happened.

[73] In relation to their sporadic access visits with N, I can understand why the Respondents would be upset when access visits were moved back to the Agency’s offices following the perceived threats made by JL in late January 2017. I can also understand how this may have posed some transportation challenges for them. What I cannot accept, however, that there is any acceptable reason, when viewed from the lens of N’s best interests, why the Respondents would make little to no effort to see their young son for months. Indeed, even after PM started requesting access visits again in May 2017, she only attended a single visit in June 2017. JL, on the other hand, has failed to see N at all between February 2017 to the time of trial in August 2017. This period of over six months represents a significant portion of N’s life, considering he is less than three years old.

[74] These parents may be frustrated with some of the Minister’s actions. They may feel their situation is hopeless. While I am sensitive to this, my paramount consideration and focus must be N’s best interests. The Respondents’ failure to make reasonable attempts to see him for months gives me no positive indication that they are truly committed to consistently doing what it takes to assume the huge responsibility of parenting him in a safe and appropriate manner not just now as a toddler, but for the many years to come when he will require consistent parental support as he proceeds through the various stages of childhood.

d) Lack of Parenting History/Lack of Support Network

[75] N was taken into the Minister’s care at birth. Besides having supervised or partially supervised visits with him, the Respondents have never had him in their care. He is the fifth child

who has been taken from one or both of their care. While past parenting history is not necessarily determinative of future ability to parent, these parents have never demonstrated that they can be consistent and stable caregivers to N or to any of their children.

[76] In saying this, I fully appreciate that these parents have faced many challenges in their lives. Their challenges have no doubt been even tougher given their lack of family support. JL apparently commented on this lack of support to Dr. Kronfli as follows:

> [JL] acknowledges that he has few supports in the community. Although his "grandfather,"…has passed away, [JL] maintains occasional contact with a family member whom he refers to as his "uncle." [JL] indicates that despite the lifelong difficulties in his relationship with his mother, he feels close to her and maintains some contact. Nevertheless, he reports that he has not communicated with any other family members since the Agency become involved in his life, as he does not want them to know that the children were taken into care. [JL] indicates that he and [PM] are largely on their own with no support in the community (Exhibit 4, Tab 1B, Page 19).

[77] While I commend the Respondents for trying to overcome the challenges they have had to face in life, placing N in their care is not appropriate given their parenting history, the existing unresolved child protection concerns, and the fact that they appear to be largely on their own without any support. N is at a very delicate stage of his life and unfortunately needs more stability and consistency than the Respondents can currently offer.

[78] In conclusion, the Minister has met her burden of satisfying me that it is in N's best interests that he be placed in the Minister's permanent care and custody. Less intrusive alternatives, including services to promote the integrity of the family, have been tried and have failed to address the child protection concerns or, for all intents and purposes, have been refused by the Respondents by their actions or inactions. This is unfortunate given that the consent to a rollover which gave these Respondents even more time to address the child protection concerns to an appropriate level.

[79] In coming to this conclusion, I realize this may mean that N does not have the opportunity to bond with his younger brother, S, who has been placed with PM's foster sister and husband. While that is a consideration, it does not outweigh the other factors which lead me to conclude that it is in N's best interests to be placed in the permanent care and custody of the Minister.

[80] The parties agreed that should I grant the Minister's application for permanent care of N, the Minister would recommend to any adoptive parents that, if possible, a relationship between N and S. Thus, I trust this will be done recognizing, of course, that the ultimate decision in this regard will rest with the adoptive parents.

5.5. Respondents' Request for Access

[81] Subsection 47(2) of the *CFSA* reads:

> Where an order for permanent care and custody is made, the court may make an order for

> access by a parent…but the court shall not make an order unless the court is satisfied that
>
> (a) permanent placement in a family setting has not been planned or is not possible and the persons access will not impair the child[‘s] future opportunities for such placement
> (b) …
> (c) the child has been or will be placed with a person who does not wish to adopt the child; or
> (d) some other special circumstance justifies making an order for access.

[82] PM and JL request post-permanent care and custody access with N. The Minister does not support this request.

[83] Once permanent care is ordered, the burden is on a parent to show that an order for access should be made. I should consider both the importance of adoption and the benefits and risks of making an order for access. Given that the hope of preserving the family within the legislated time limits is lost and that the focus becomes a stable placement plan, the circumstances justifying post-permanent care access are rare and limited: ***Children's Aid Society of Cape Breton Victoria v. A.M.***, [2005] N.S.J. 132 (C.A.); ***Children and Family Services of Colchester County v. KT.***, 2010 NSCA 72.

[84] PM argues that there is a special circumstance pursuant to s. 47(2) (d) that justifies making an order for access as the Respondents' other child, S, is placed with PM's foster sister and her husband. In her brief, PM suggests that her foster sister will promote a relationship between N and S and will facilitate access between S and her and JL. She argues that it is likely that N will have some form of relationship with them in any event and that there is no risk that continued access will impair a future placement.

[85] I reject PM's request for an order for continued access between the Respondents and N. I do so largely for the following two reasons.

[86] First, there have been numerous instances of conflict between the Minister and JL in particular. Access between the Respondents and N has been very sporadic or non-existent for the last several months. Thus, I believe that expecting the necessary individuals to coordinate continued access now is unrealistic and is also unwarranted when the focus shifts to finding a stable placement for N.

[87] Second, as noted in paragraph 67 of Kristy Newell's affidavit sworn to on June 7, 2017 (Exhibit 2, Tab 34), it appears that N's foster parents have decided to put forward their names as potential adoptive parents for him. Thus, pursuant to subsection. 47(2)(c) of the *CFSA*, I do not believe access should be ordered.

[88] Furthermore, as noted earlier, part of the reason why access visits with N were moved back to the Agency offices in late January/early February 2017, was because of a perceived threat made by JL against the foster parents on January 30, 2017, when, after learning the identifying information about N's foster parents, he stated, "I know their names now…See what they have to say when their house goes up in flames". While PM says that the comment was taken out of context, I am also concerned about escalating conflict between the Respondents and the foster parents should access be ordered. Clearly, such conflict would not be in N's best

interests.

[89] Thus, I am not satisfied that the Respondents have discharged their burden of establishing that this is one of those rare and limited cases where post-permanent care access should be ordered. I therefore dismiss their request for continued access.

6.0 Conclusion

[90] I grant the Minister's application for an order placing N in the Minister's permanent care and custody and order there be no post-permanent care access for the Respondents.

[91] I direct that the Minister's counsel to prepare the appropriate form of Order reflecting my decision. The draft Order should be sent to PM's counsel and personally served on JL. They will each then have five business days to advise in writing whether they have any objections to the form of Order. If not, the proposed form of Order should be sent to me for my review and endorsement.

Jesudason, J.