SFH C9264
SFHMCA-014314

IN THE SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

BETWEEN: CHILDRENS' AID SOCIETY OF HALIFAX - APPLICANT

-AND-

N.D. and R.C. -
RESPONDENTS

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on August 5, 2008.

DECISION

Cite as 2002-NSSF-032

HEARD:	BY THE HONOURABLE JUSTICE LESLIE J. DELLAPINNA ON JUNE 10, 11, 12,14, 17, 18, 19, 21, 2002	
DECISION:	JUNE 27, 2002	
COUNSEL:	JOHN UNDERHILL	- APPLICANT
	SANDRA BARSS	- RESPONDENT (N.D.)
	LEE MITCHELL	- RESPONDENT (R.C.)

NOTICE

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:

> 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.

DELLAPINNA, J.

O.M.R.C. is the daughter of N.D. and R.C..

O.M.R.C. was born [in 1999] and it was found, by consent, to be a child in need of protective services pursuant to s.22(2)(g) of the **Children and Family Services Act** of Nova Scotia.

A disposition hearing was held over eight days. The Children's Aid Society seeks a dismissal order pursuant to s.42(1)(a).

Subsequent to O.M.R.C.'s birth, N.D. and R.C. separated. At this time a reconciliation does not appear likely. Both parents have brought applications for custody pursuant to the **Maintenance and Custody Act**. Their applications were heard at the same time as the disposition hearing.

BACKGROUND

N.D. is 31 years of age. When N.D. was five months old, she was diagnosed with hydrocephalus. As a result, she was hospitalized many times as a young child to undergo various surgical procedures to treat this condition including the implanting of a shunt to drain fluid from her brain and to deal with repeated blockages and

infections. In total, she has undergone at least 15 surgeries during her lifetime.

At nine years of age, N.D. was diagnosed with epilepsy. Her epilepsy has been successfully controlled with medication and rest. She has not had a seizure for over nine years. She will have to continue taking medication probably for the rest of her life. She is also required to maintain a consistent evening sleep schedule. If she does not get adequate rest, she is susceptible to migraine headaches.

Due in large part to her medical difficulties and the treatment that they necessitated, N.D. did not develop socially at the same rate as her peers.

N.D. also has an impaired learning ability. Nevertheless, N.D. did successfully complete grade 12.

At the completion of grade 12, N.D. underwent a psychological assessment to assist her with academic and vocational planning. One recommendation was noted in the parental capacity report prepared by Beverley Johnson, M.S.W., in August of 2000. The recommendations stated:

> " N.D. is a 20 year old girl who is found to be functioning intellectually in the low average range. Although N.D. is a very dependable, conscientious and serious student she does not have much confidence in herself and is reluctant to take praise for her efforts. According to her mother, N.D.'s neurological condition has made it very difficult for N.D. to achieve age appropriate social skills as well as understanding the nuances and subtleties of conceptual and interpretive thinking. It was discussed at the meeting that N.D. might be a good candidate for stress reduction clinic which is run through the Abbie Lane Hospital and this could be discussed with Dr. Ross or Dr. Dooley."

Much of that quote seems as applicable today as it was 11 years ago.

In addition to all her other difficulties, N.D. also suffers from anxiety.

She has been working with her psychiatrist, Dr. Orlik, since the age of nine. Her family doctor, Dr. Marilynne Bell, has also provided psychotherapy and support for N.D. for approximately five years.

When N.D. was less than two years of age, her parents separated. When N.D. was approximately six years of age, she lived with her father for a period of three years before returning to live with her mother. Her mother, H.D., entered into a common law relationship with D.M.. D.M. met N.D. when she was nine years of age and he

testified that he has considered himself as her father since that time.

N.D. has a younger sister, R., who is a physician in residency.

N.D. has never been able to secure paid employment other than for work she has performed for her stepfather. At the time of the hearing, N.D. was residing with her mother and stepfather in [...].

R.C. is 35 years old. He was one of 19 children. From all accounts R.C. had a difficult upbringing. It would appear that if any of the C. children stepped out of line, they were severely punished by their parents.

R.C.'s father is now deceased. R.C. continues to have a close relationship with his sister, T.. T. is married with three children of her own. He also stays in telephone contact with his mother. His mother lives in New Brunswick.

R.C. is legally blind. He has Anaradia and glaucoma. It is a condition that he shares with some of his siblings. When he was ready to go to school, he was sent to the School for the Blind in [...] along with one of his brothers. When he was in the fourth

grade he was removed from the School for the Blind and continued his education in the regular school system in New Brunswick.

He completed grade 10 and returned to live in [...] when he was 19.

After returning to [...], he participated in tutorial services and beginning at age 21 took formal upgrading classes through a vocational school. He completed his grade 12 equivalency. He worked for one year with [name of employer changed]and for another year for [name of employer changed]. Prior to his separation from N.D., he worked in a book store owned by his in-laws. With that exception he has not been employed for approximately six years.

Except for the fact that he is visually impaired, he is healthy. All indications are that he has learned to cope with his blindness. He does have some vision. He can make out large objects, distinguish colour and with the help of glasses can make out smaller objects and even read. He uses magnifying glasses and has a monitor for print enlargement. He was able to navigate through the courtroom with little difficulty. His evidence is that he is not afraid to ask for help when he needs it. He receives technical support from CNIB.

R.C.'s first language is French but he is reasonably comfortable with English.

At the time of this decision, O.M.R.C. is approximately three months short of her third birthday. Like her father, she was born with Anaridia. She has no iris in her eyes. This impedes her ability to control the amount of light that enters her eyes. Apparently with this condition there is a significant chance that she will develop glaucoma during her early adolescence. At the present time, O.M.R.C. exhibits minimal effects of Anaridia.

Within a few months of her birth, O.M.R.C. was diagnosed as having gastroesophageal reflux. She often regurgitated whatever nutrition she took in thus impeding her ability to gain weight. This necessitated her readmittance to the hospital on a number of occasions including November, 1999 and March, 2000 due to her failure to thrive. During her hospitalization her parents were taught how to feed O.M.R.C. through a tube that was inserted through her nose. In January, 2001 a "button" was implanted which leads directly to O.M.R.C.'s stomach. She continues to be fed through a tube connected to her "button" by way of a pump. Both parties (as well as N.D.'s parents) have been trained so that they may properly feed O.M.R.C..

Her pediatrician, Dr. Szudek, testified that O.M.R.C. should now be weaned from the pump. Most children with this condition are weaned from the pump between their first and second birthday. Dr. Szudek attributes the delay of this weaning process in part to the ongoing marital conflict between the parties.

Notwithstanding the failure to wean O.M.R.C. from the pump feeding, she appears to be developing normally and has a good relationship with both of her parents. There is no doubt that her parents love O.M.R.C. and both want to be her primary parent.

N.D. and R.C. met in the Spring of 1998. They began cohabiting soon after that and were engaged by December of 1998. N.D. became pregnant for O.M.R.C. and the parties were then married [in 1999]. Marital difficulties between the parties began before O.M.R.C. was born [...].

The problems in the marriage became even more obvious after O.M.R.C. was born and before her discharge from the hospital. During O.M.R.C.'s second hospitalization between late November 1999 and February, 2000 the conflict between the parties was quite apparent. Their discord was noticeable enough to the hospital staff that the paediatrician that was treating O.M.R.C. at the IWK at the time phoned

the agency to express her concern for O.M.R.C.'s well being once discharged from the hospital.

O.M.R.C.'s birth and her particular care requirements placed a lot of pressure on her parents. The ensuing stress that they experienced was made worse by N.D.'s post partum depression, sleep deprivation that both suffered and perhaps also by what R.C. perceived to be the intrusion of N.D.'s parents in their lives. The parties separated in March, 2000.

Also in March, 2000, the agency initiated proceedings under the **Children and Family Services Act**. The interim hearing was completed on March 29, 2000 and the protection proceeding on June 20, 2000. Both hearings concluded by consent. The disposition hearing took place on September 14, 2000. An agreement was reached on the terms of that order as well. O.M.R.C. was placed in the care and custody of R.C. subject to the supervision of the agency and N.D. was given access from Thursday at 1:00 p.m. until the following day at 6:00 p.m. each week.

Throughout the agency's involvement, various services were provided to the Respondents. Those services included nursing instruction, individual family intervention workers, individual counselling as well as marital counselling, assistance with transportation in order to effect access, a parental capacity

assessment as well as psychological assessments. These services are in addition to other services that were available to the parties through community resources, including medical care, advice from a nutritionist, psychiatric counselling, etc..

By January, 2002 the agency had reason to believe that the parties would reconcile and they were sent to a mediator to work out a child care arrangement in the event that their reconciliation did not last. The reconciliation, however, did not occur.

Due to time limitations the initial application was dismissed in January, 2002 and a new application commenced. That proceeding eventually led to this disposition hearing.

THE AGENCY'S PLAN OF CARE

The agency is seeking an order of dismissal with respect to its application under the **Children and Family Services Act**. The agency is asking the Court to determine the most appropriate parenting plan taking into account O.M.R.C.'s best interest. Ms. Barbara MacPherson, the family care protection worker employed by the Children's Aid Society, gave evidence with respect to the agency's current position as it relates to O.M.R.C.'s ongoing care. She stated that she believes the focus should now be on O.M.R.C.'s need for stability, a primary residence and consistent day to day management.

She stated the agency is of the view that the primary care giver should be the sole decision maker who would also be capable of giving accurate information to medical personnel and who would be willing to accept advice when needed. She also restated a point made originally by Dr. Szudek which was that O.M.R.C. should have come off the pump a year ago and it is the agency's hope that with a primary care giver being assigned that person will take steps to immediately begin weaning O.M.R.C. off the pump. For these reasons, Ms. MacPherson felt that a change in the care arrangement needs to take place.

N.D.'s PLAN OF CARE

N.D. proposes that she and R.C. share joint custody of O.M.R.C. with O.M.R.C. residing primarily with N.D. at the home of her parents. She proposes that R.C. have access to O.M.R.C. each weekend from Friday at 3:30 p.m. until the following Sunday at 5:30 p.m. as well as either Tuesday or Wednesday of each week from 3:30 p.m. to 6:00 p.m.. She also proposes additional access during holidays, vacation periods and other special event days during the year.

Her plan assumes that she will continue to live with her parents who in turn would provide assistance when needed.

R.C.'s PLAN OF CARE

R.C. proposes that he have custody of O.M.R.C.. He contends that he is better able than N.D. to provide the care that O.M.R.C. needs. He also believes that N.D.'s access to O.M.R.C. should be supervised either by her parents or, if she is not residing with her parents, by an outside agency. It is his belief that N.D., on her own, cannot properly parent O.M.R.C.. It is also his position that there remains considerable conflict between N.D. and her parents (particularly her mother) and that to place O.M.R.C. in the care of N.D. would be to place her in an unpredictable and unstable environment.

He proposes that, at the beginning at least, N.D. have supervised access to O.M.R.C. only one day per week.

DISCUSSION

Section 41(1) of the **Children and Family Services Act** provides:

> " Where the court finds that a child is in need of protective services, the court shall, not later than ninety days after so finding, hold a disposition hearing and make a disposition order pursuant to Section 42. "

Subsection 42(1) provides:

> "At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:
>
> (a) dismiss the matter;
>
> (b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject

to the supervision of the agency, for a specified period, in accordance with Section 43;
(c) the child shall remain in or be placed 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, for a specified period, in accordance with Section 43;
(d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;
(e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;
(f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47."

Subsection 3(2) provides:

" 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."

The Children's Aid Society has been involved with the Respondents for approximately 28 months. During that time, they have come to know the Respondents and more importantly the needs of O.M.R.C. much better. The Respondents have been given training from various professionals as well as counselling. A parental capacity report has been prepared as well as a psychological consultation report. As a result, the agency and its workers have gained a greater appreciation of the strengths and weaknesses of the Respondents and, to some extent, their extended family members. With that additional knowledge the agency has come to the conclusion that a dismissal order would be appropriate provided one parent was given primary care and control of O.M.R.C.. While taking a neutral stance on the issue, the agency submits the evidence supports placement with R.C. as opposed to N.D.. Further, the agency does not support a joint custody order because of the degree of conflict between the Respondents.

The **Maintenance and Custody Act** provides in section 18 that the Court may on application by a parent make an order that a child be in or under the care and custody of a parent or an order respecting access and visiting privileges. Subsection 18(5) provides:

> "In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall apply the principle that the welfare of the child is the paramount consideration."

During the course of the trial the Court heard from many witnesses. In addition to the parties, some of their family members and agency social workers, the Court also received evidence and reports from the therapists who worked with the parties themselves, the psychologist who assessed the parties, Ms. Beverley Johnson, who prepared the parental capacity assessment, Dr. Szudek who is O.M.R.C.'s paediatrician, Dr. Orlik and others. Of the "independent" witnesses who expressed an opinion regarding custody, virtually all favoured the placement of O.M.R.C. with her father.

In her report, Ms. Sharon Cruikshank, described N.D. as being hysterical and very much dependent on her mother. When she first made telephone contact with N.D. to arrange her first meeting, N.D. became hysterical on the telephone and yelled for her mother. Even after her mother took the phone, Ms. Cruikshank could hear N.D.'s "loud hysterical screaming in the background". When N.D. attended for her first interview, she came with her mother. When asked by

Dr. Cruikshank who the most important people in her life were, she stated: “my mother, D.M. [her stepfather] and my sister”. She did not mention O.M.R.C. or R.C.. The assessment was conducted at a time when reconciliation between the parties was still a possibility.

Ms. Cruikshank described N.D. as immature, as having low self esteem, as excessively dependent on her family for assistance and admitting to suffering anxiety, fear, helplessness, tension and regret. She also described her as “in considerable emotional/personal turmoil” and as one who “experiences periods of marked emotional, cognitive and behavioral dysfunction”. At page 15 of her report, she states:

> “Ultimately, it is my strong opinion that N.D. is unable to act alone because of marked self-doubts.”

In her conclusions, she stated:

> “I would have concern if R.C. and N.D. were parenting N.D. jointly. It is not my view that N.D. is independently able to parent O.M.R.C. on her own. Additionally, if O.M.R.C. were placed in the care and custody of her maternal grandparents and N.D., I would recommend that assessment information be obtained about H.D. [her mother]. I have concern that N.D. would not be the individual primarily responsible for parenting of her daughter in that home ... “.

With respect to R.C., Ms. Cruikshank testified that R.C. was cooperative throughout the assessment. She was struck by how supportive R.C. was of N.D.. In her report she stated that it was

clear that he was ‘very tuned into O.M.R.C.’s needs and development at this time”. Also, “he presented in this one to one setting as a congenial individual who was entirely cooperative”. “He was forthcoming in responding to all questions presented to him” and “was neither inattentive, nor impulsive”.

At page 26 of her report, she stated:

> “R.C. impressed me as being highly independent, given his physical disability and the resulting limitations he has experienced. He is not seen to have anti-social attitudes or behaviors, nor is he plagued by self doubt.”

In her conclusion, she said:

> “In summary, I was favourably impressed with R.C.. I do have concern, however, about the degree to which he will be able to meet O.M.R.C.’s needs as she grows and develops, particularly with regard to developmental stimulation, his awareness of subtle changes in her developmental status with increasing age, and his physical capacity to respond quickly to emergency situations, notably with an active pre-schooler.
>
> Nevertheless and with respect to the report of Beverley Johnson [the parental capacity report] and the position of the Children’s Aid Society of Halifax, I would support recommendations in the Parental Capacity Report, and underscore the need for considerable support to R.C. in his day-to-day parenting responsibilities.”

Beverley Johnson recommended that O.M.R.C. be placed in the care and custody of her father with supervised access being granted to N.D.. At pages 14 and 15 of her report dated August 8, 2000 , Ms. Johnson stated:

“N.D. lacks self-assurance and has strong feelings of inadequacy around her parenting role. These feelings impede N.D.’s ability to function and she has said how important it is to her that her support persons are very close by. N.D. has significant trouble with decision making. She seems to be easily swayed by whoever she is talking with at the time. Making decisions is a challenge for N.D.C. because she appears to need excessive amounts of advice and reassurance from others.

...

When N.D. is confronted with an actual or perceived stressor, her anxiety level rapidly escalates and she abruptly stops a task and physically leaves. When this Assessor observed this impulsive behavior, the stress-inducing event was N.D.’s inability to snap the fastenings together on O.M.R.C.’s clothing. N.D. quickly arose, stated she could not “do it” and left the room. O.M.R.C. was on the floor and while not in any immediate risk, it is difficult to imagine how many scenarios might trigger such erratic behavior.

...

N.D.’s parenting abilities are bolstered by the presence of support persons. However, there are problems of intense anxiety, low frustration tolerance, immaturity, and erratic behavior that affect this parent’s ability and provide the potential for significant risk to O.M.R.C.. N.D. will require both support and supervision during her access visits with O.M.R.C.. N.D.’s parenting skills are limited and, because of all the above, she should not have unsupervised or independent parenting opportunities. This Assessor found N.D. to be predictably unpredictable. The D. household is disorganized and the communication style chaotic. Both D.M. and H.D. have been oppositional in their dealings with Agency personnel and medical staff. H.D.’s telephone behavior was reportedly so negative and persistent that the Director of the [...] Medical Centre reportedly sent a letter to H.D. directing her to stop calling a particular staff person. Such behavior raises questions about this couple and the family’s ability to comply with requests or directions of medical or supportive services personnel. There is also a concern that the relationship between N.D. and her mother is unstable. N.D. has vacillated between wanting to live with R.C. and remaining at her mother’s home. There are references to

> disagreements between N.D.'s mother and N.D.. There is no certainty that N.D. will remain at her parents' home.
>
> O.M.R.C. requires consistency, stability and a secure home environment. N.D. does not have sufficient control of her emotions or her conduct to satisfy identified concerns that affect her parenting capacity."

With respect to R.C., she described him as having coped well with his visual impairment and at page 16 of her report stated:

> " R.C. is warm, affectionate and consistent with O.M.R.C.. More importantly, R.C. has demonstrated that he can independently provide the necessary quality of care that O.M.R.C. requires. R.C. had full responsibility of O.M.R.C. for a sustained period of time in March - April of this year [2000], following H.D.'s loss of consciousness and hospital treatment.
>
> R.C. is open to accepting and participating in any supportive services ... He has a good understanding of the developmental and health care needs of his daughter. It is important to note that he has stated, "when I don't know something, I will ask the proper person. I'm not ashamed to ask for help"."

During summation, counsel for N.D. suggested that Ms. Johnson was not objective in her assessment of N.D. and that Ms. Cruikshank was heavily influenced by Ms. Johnson's report. I do not accept that Ms. Johnson was biassed. Further I accept that Ms. Cruikshank formulated her own opinion based on her own findings.

Words and phrases used by various witnesses to describe N.D. included dependent, immature, anxious, sometimes hysterical,

impulsive, unpredictable, uncooperative, rebellious, defensive, combative, self absorbed, paranoid, lacking confidence in herself, lacking the basic knowledge of child care, lacking focus and impatient. Her family members and Dr. Orlik were more positive in their descriptions. Words and phrases used by many of the witnesses to describe R.C. included patient, mature, cooperative, dependable, independent, a self-starter and that he knows his limitations.

While both Respondents were restrained in their criticisms of the other's parenting abilities, neither felt that the other could parent O.M.R.C. without assistance. In her affidavit, N.D. expressed concern for how R.C. has exercised judgment in the past. In particular she criticized him for leaving O.M.R.C. with a neighbor, Ms. Q.. Ms. Q. testified. She was very complementary of R.C. and expressed no concern regarding his ability to parent a young child. She also stated that she has cared for O.M.R.C. for brief periods of time (no more than a few hours at a time) while R.C. went on errands such as to the grocery store. Other than N.D.'s affidavit, there was no other evidence to suggest that Ms.Q. was an unsuitable babysitter for O.M.R.C..

N.D. also stated that it is her belief that R.C. wishes to exclude her and her family from O.M.R.C.'s life although again, no convincing evidence was presented to indicate that that is a valid concern.

She pointed out that R.C., although he comes from a large family, appears to have little family support. In response R.C. stated that he is close to his sister and has gone to her from time to time for advice. He also speaks to his mother by phone. He has shown a willingness to seek assistance from community services such as physicians, the Atlantic Provinces Special Education Authority and the local office of the Canadian National Institute for the Blind. N.D. also stated that because of R.C.'s visual impairment, he may not physically be able to parent O.M.R.C. on a full-time basis. R.C.'s response to that is that he has learned to cope with his disability and that it would in no way prevent him from fulfilling the role as O.M.R.C.'s primary parent.

R.C.'s criticism of N.D. is primarily that she does not sufficiently try to care for herself and O.M.R.C.. He gave examples of her unwillingness to learn how to properly do the laundry, how to cook and how to keep their apartment clean. He stated that he told her he was confident in her ability to perform such basic functions but that she lacked confidence in herself and therefore avoided those chores. He believes that if N.D. was granted primary care of O.M.R.C. her mother would in fact eventually assume the primary parenting responsibilities.

Both N.D. and her mother testified that N.D. would be the primary parent. Her mother, H.D., made a point of stating that she was in no way O.M.R.C.'s parent. She was quite content with her role as a grandmother and would only assist N.D. if and when asked or in the event of an emergency. Beyond that, she was there to provide advice. N.D.'s oral evidence was consistent with that position. She testified that even though her susceptibility to migraines required her to get a full night's sleep, she has been and would continue to be the person who would respond to O.M.R.C. if needed including during the evening. That contrasts with her affidavit sworn June 3, 2002 wherein she states:

> "50. The hydrocephalus causes me to become tired and can cause headaches if the shunt is not working properly. As a result, it is imperative I have regular sleep each night if I am to function well during the day.
>
> 51. I also have epilepsy but this condition has been controlled with medications for more than seventeen years. I have not had a seizure since I was 15 years old.
>
> 52. As a result of this, at the present time, my mother assumes responsibility for O.M.R.C.'s care once I have retired for the night. While R.C. and I were together, I had to rely on him to provide this care.
>
> ...
>
> 54. My mother has told me, and I verily believe this to be true, that she is willing to continue the responsibility for night care for O.M.R.C. until she is able to feed normally."

I accept that what O.M.R.C. needs most now is stability in her day to day care including a consistent approach to her medical needs. I do not believe that can be accomplished with the current child care arrangement. Presently the parties share the care of O.M.R.C. on a close to equal basis with the child being with one parent for approximately half of the week and with the other parent the other half. This arrangement has been in place for approximately two years. It and the lack of communication and cooperation contributed to O.M.R.C.'s continued dependence on the pump.

I accept that O.M.R.C. has bonded emotionally with both Respondents and while stability is the Court's primary concern at this time, it is hoped that the order that follows will in no way adversely affect the child's relationship with her parents. It is in her interest to maintain a close and loving relationship with both her mother and father.

CONCLUSION

If primary care of O.M.R.C. is granted to N.D. I have little doubt that N.D. will rely very heavily on her mother. It is possible and perhaps even likely that H.D. would in time become O.M.R.C.'s primary caregiver.

H.D. takes medication because, like her daughter, she suffers from anxiety. She stated she also suffered from post traumatic stress disorder. There is some evidence to suggest that H.D. has over medicated or improperly medicated at times and this on one occasion caused her to pass out. While that possibility is of some concern, of greater concern is the apparent lack of respect that H.D. has for R.C. and her animosity towards him. While she attempted to mask that negativity there is reason to believe that it exists and rather than abating has grown worse with the passage of time.

When not rebelling from her mother, it is likely that N.D. does little without her mother's knowledge. A number of incidences have occurred since O.M.R.C.'s birth that support the agency's view that H.D. and N.D. acted in concert in a campaign to discredit R.C. for the sole purpose of having O.M.R.C. placed with them rather than him. For example, N.D. on one occasion when to Bryony House contending that she was a victim of domestic abuse. No specific episode of abuse of any kind had occurred at that time. On cross examination, she stated that she went to Bryony House because she was fed up with verbal abuse and criticism and being belittled. While there was one episode when R.C. struck N.D. on the leg it was not in any way connected with her attendance at Bryony House. It would appear that N.D. went to Bryony House either because she was

unsatisfied with her relationship with her husband and did not feel comfortable going to the home of her parents or she was possibly dramatizing her circumstances.

In March of this year, N.D. told a social worker at the QEII hospital that she believed that R.C. had been sexually abusing O.M.R.C. and had been doing so for quite some time. This disclosure was accompanied by further details which were well documented. Upon investigation, the facts (including a physical examination of O.M.R.C.) did not support her allegation. The agency then temporarily suspended N.D.'s access for approximately a week to give the agency time to further investigate the complaint and keep O.M.R.C. out of what seemed at the time to be an emotionally charged atmosphere. When N.D. perceived that her accusation had backfired, she attempted to make it appear that the social worker has misconstrued her statement and that she in no way intended to accuse R.C. of abuse. H.D. was aware of the complaint and supported it until N.D.'s access was suspended. She, too, then contended that her daughter was misunderstood. I find that N.D. did in fact accuse R.C. of sexual abuse when speaking to the social worker. The social worker was not mistaken. Further, N.D. knew at the time that no abuse had occurred. I also find that there is no evidence that R.C. ever sexually abused his daughter.

Much earlier than these incidents, N.D. and her family had O.M.R.C. baptized without advising R.C. of the ceremony.

Two serious concerns were raised by N.D. with respect to R.C.. One was the incident when he shoved N.D. and struck her in the leg. R.C. admits having done so although he refers to it as a "tap". The Court does not condone domestic abuse of any kind. However, I accept that this was an isolated incident and was uncharacteristic of R.C.. It occurred at a time when both parties were exhausted from their care of O.M.R.C. and when tensions between the parties were perhaps at their peak. N.D. was not injured in any way. Nothing like it happened before that incident and nothing like it has happened since. R.C. accepted responsibility for his actions. I think it unlikely that such an event will reoccur.

The other concern raised was with respect to R.C.'s previous recreational use of marijuana. Again, he acknowledged that he did from time to time use marijuana. When the issue was raised by the Applicant he admitted using marijuana and agreed to stop using it. He consented to random urine drug testing. He has not used marijuana since February 13, 2002. He is prepared to consent to an order requiring him to abstain from the use of non medically prescribed drugs. There is no evidence that his prior use of marijuana in any way affected his parenting ability. Nevertheless, the Court will

require him to refrain from any unauthorized use of controlled substances.

Although originally resistant to the agency's involvement, R.C. has come to understand and appreciate the agency's concerns. He accepted the services that were offered and went about investigating community services on his own. I accept his testimony that he accepts his limitations and will seek assistance from appropriate sources when needed.

N.D. has always been resistant to the agency's involvement and continues to resent its involvement. Not surprisingly, she does not share the views of the various professionals who recommend placement with R.C..

Because O.M.R.C. is less vulnerable now than she was when the agency first became involved and because of the knowledge and experience that the Respondents (and in particular, R.C.) have gained from the various services they have accessed since O.M.R.C.'s birth and with the greater certainty that hopefully will be gained by a more defined custodial arrangement, I find that O.M.R.C. is no longer a child in need of protective services and the agency's request for a dismissal order will be granted. In her plan of care, N.D. proposes that the parties share joint custody. I agree with the agency and with R.C.'s counsel that joint custody is not likely to be a workable

arrangement at this time. There is too much conflict between the parties at this time. Their relationship lacks the necessary degree of cooperation and communication that is necessary for a joint custody arrangement to function. Joint custody at this time would not be in N.D.'s best interest.

It will be ordered that O.M.R.C. be placed in the sole custody of R.C..

I accept that R.C. is well aware of his daughter's needs. Being a person with special needs himself, he may better appreciate some of those needs more than a sighted person. The Court recognizes the limitations that he might have as a result of his visual impairment but so too does he. With the assistance of community based agencies from time to time I accept that R.C. is well equipped to properly meet all of the care needs of O.M.R.C.. Nothing in the evidence leads me to believe that he would place O.M.R.C. at risk by putting his pride before her well being. Emotionally, intellectually and physically he is able to care for O.M.R.C.. R.C. has lived independently before, he is living independently now and he has shown during the course of these proceedings that he is able to provide proper care for O.M.R.C. on his own. He has also shown that as between the two Respondents, he is better able to provide the medical

professionals who will be treating O.M.R.C. in the future with the most reliable and consistent information that they will need.

N.D. has overcome significant hardships. She has great potential. However at this time I do not believe that she is able to provide the level of care that O.M.R.C. requires. Due in many respects to her own self image, she lacks the tenacity needed to be a full-time parent. She doubts her own ability to care for O.M.R.C.. At crucial times she may panic and unwittingly place O.M.R.C. at risk.

Because of H.D.'s and N.D.'s negativity towards R.C., I do not believe that placing O.M.R.C. in the D. household would be in her best interests particularly in view of R.C.'s obvious ability to care for O.M.R.C. himself. H.D. and N.D. are unlikely to encourage a positive relationship between O.M.R.C. and her father.

I am also concerned about the long-term stability of the relationship between N.D. and her mother. There has been much turmoil between the two. I do not believe that N.D. truly wants to live with her parents. She wants her independence but there are indications that she might also fear it. She lacks confidence in her ability to care for herself let alone a young child. If circumstances develop that give N.D. the opportunity to leave the

home of her parents, I believe she will take that opportunity. Depending on those circumstances that might benefit N.D. in terms of her own development. However, what her daughter needs now is certainty and consistency.

N.D. should have access to O.M.R.C.. Any access should not, however, impede the process of weaning O.M.R.C. from the pump. Access and O.M.R.C.'s attendance at day care, will provide R.C. with the respite that he may require from the exertion of full time care of O.M.R.C..

Many of the concerns that have caused me to decide in favor of granting R.C. custody also lead me to believe that at the present time N.D.'s access to O.M.R.C. should be supervised. Therefore, pursuant to the **Maintenance and Custody Act**, the following will be ordered:

(1) R.C. will have sole custody of O.M.R.C..

(2) N.D. will have access to O.M.R.C. each weekend from Saturday at 9:00 a.m. until the following Sunday at 5:30 p.m.. Once O.M.R.C. has been fully weaned from the pump, it may then be appropriate to introduce additional weekday access such as one weekday evening each week from approximately 4:00 p.m. to approximately 6:30 p.m..

(3)

Transportation for access visits will be arranged by N.D. hopefully with the

assistance of her stepfather, D.M.. If her stepfather or mother are not willing to provide assistance, then she will make arrangements with another person who must be agreed upon by both parties.

(4) It would be appropriate for N.D. to have additional access during Christmas, for a summer vacation and other special event days during the year. If the parties are unable to reach an agreement on such days, I would be prepared to hear further arguments from counsel. The Court's immediate concern is that whatever access may be agreed upon, it does not in any way impede the progress of weaning O.M.R.C. from the pump and does not jeopardize any subsidy to which she might be entitled by attending day care.

(5) R.C. will not change any of O.M.R.C.'s health care providers without first advising N.D..

(6) R.C. will keep N.D. advised of all medical treatment received by O.M.R.C. including prior notice of any scheduled appointments with any medical professionals, any medication she might need to take, together with thorough instructions on what medications she is to take and when. In the event that O.M.R.C. requires emergency medical attention, the parent who at that time has the care of O.M.R.C. will advise the other parent as soon as is reasonably possible of the nature of the emergency.

(7)

The parties will continue to use a journal which will travel back and forth with O.M.R.C. during access visits for the purpose of communicating information regarding medical or other information about O.M.R.C. that may be of interest to the other party.

(8) R.C. will continue to abstain from the use of any non-medically prescribed drug.

(9) N.D. will immediately advise R.C., in writing, in the event that she no longer resides at the home of her mother and stepfather.

(10) R.C. will not relocate O.M.R.C. outside the Halifax Regional Municipality without first advising N.D., in writing. Such notice will be given no later than 60 days prior to his intended relocation date.

It is assumed that R.C., in cooperation with O.M.R.C.'s physicians, will immediately take steps to wean her from the pump. It is also assumed that he will continue to have O.M.R.C. attend the [name of daycare changed] and have her attend five days a week rather than the present three.

I request that the agency's lawyer prepare the dismissal order and that R.C.'s lawyer prepare the order pursuant to the **Maintenance and Custody Act.**

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Leslie J. Dellapinna, J.