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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."

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

BETWEEN:

MINISTER OF COMMUNITY SERVICES

APPLICANT

- and -

T.L.S. AND G.R.H.

RESPONDENTS

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on September 11, 2008.

DECISION

Cite as: MCS v. S. and H., 2003 NSSF 05

HEARD: at Halifax, Nova Scotia before The Honourable Moira
C. Legere-Sers

DECISION: January 28, 2003

WRITTEN RELEASE: January 28, 2003

COUNSEL: John
Underhill, for the Applicant
Lola Gilmer, for the Respondent, T.L.S.

LEGERE-SERS, J.

The Minister of Community Services seeks a permanent care and custody order with respect to the child, P.M.H. born [in 1998].

The Protection Application is dated December 21, 2001. The “Five-Day” Hearing was held on January 2, 2002. The child was ordered to remain in the care and custody of the Minister of Community Services with access to both parents on the terms and conditions set out in the Order.

By consent, on January 16, 2002, at the Interim Hearing the parties agreed that the child should remain in the temporary care of the Minister. Services were offered and the parents agreed to participate in them. A parental capacity assessment was undertaken.

On March 11, 2002, the parties consented to an order finding the child in need of protective services.

On May 1, 2002, counsel for the Minister notified the parties and the Court that the Minister was seeking a permanent care and custody order. Both parties, at that time, consented to a Bridging Order. The deadline for first disposition was

June 9, 2002. The Bridging Order was entered into, and the matter was adjourned to an organizational pre-trial on September 23, 2002, and for trial in November 2002. The trial took place over four days.

The child, born [in 1998], was placed in Voluntary Care in August 2001 to allow the mother time to stabilize and make the necessary changes to parent him. He was returned to his mother's care in December 2001 and re-apprehended within 16 days. He has remained in foster care since that date to and including January 2003. He has had weekly visits with his mother and father separately. His mother has been faithful in attending these visits.

The Minister seeks an immediate order for permanent care and custody, notwithstanding that the date for final disposition in this matter would be in June 2003. The Minister maintains the position that it is in the best interests of the child that a permanent care order be entered into now. They have offered all reasonable resources and argue that the likelihood of change in the mother's historical conduct is minimal.

The mother argues that she ought to be entitled to an additional period of time, taking her to the end of the disposition dates available pursuant to Section 45 of the **Children and Family Services Act**. She seeks to have additional time

to engage in services and to address the issues outstanding with respect to the protection hearing.

PRIOR AGENCY INVOLVEMENT

The Department of Community Services was involved with the Respondents on July 23, 1999, prior to the Protection Hearing commencing in December 2001. While T.L.S. was filling out an application for social assistance, she informed the Income Assistance worker that she was assaulted by G.R.H. while she was holding the baby. She disclosed to the worker that G.R.H. repeatedly punched her head. She picked up her son and held him in her arms hoping it would make G.R.H. stop. The mother disclosed that there was a previous incident which dated back to July 10, 1998. In addition, the doctor informed the mother that the baby was undernourished.

On August 12, 2000, the police responded to a report of domestic violence, upon arrival they found T.L.S. very intoxicated. T.L.S. told the police she had six beer. She appeared to have bruising on her arms and legs. The police called child protection authorities.

The Agency's goal in September of 2000 was to ensure the parents engaged in substance abuse counseling. The parents were given time to respond to the concerns.

On November 17, 2000, T.L.S.'s rent was unpaid. She has difficulties with budgeting and finances. In July 27, 2001, the mother suggested her child would live with a Godparent so she could address her mental health problems.

In August 2001 the mother found herself without money for diapers and unable to care for the child. She owed money to the milkman. They would not deliver milk to her. She met with the Agency to discuss taking P.M.H. into care. He was placed in Voluntary Care with a member of her extended family on August 21, 2001 while the mother was to attend counseling and to address her mental health issues. She agreed to attend counseling and to attend the C.O.R.E. program.

For approximately four months the child remained in care. Over the four months the mother attended, at most, one-half day in the C.O.R.E. Program. As of November she was still drinking. She did attend eight out of ten counseling sessions.

Service providers have consistently reported that the mother has been open, candid and willing to engage but unable to follow through on resources.

On December 15, 2001 the Agency acceded to the parents' request to return the child to the mother and to provide services to the family to address the substance abuse and relationship issues because she had attended some counselling courses in December of 2001 and some progress was noted. The Agency commenced an application and the return took place by way of a supervision order. At that time her partner was known to hit her son and hit the mother.

The mother has had ample notice of the Agency's concern about domestic violence and the risk this posed to her son. She was warned in August of 1999 and again on August 12 and again on August 27, 2000.

In August 2000 the mother was living separately from G.R.H., although he lived in an apartment in the same building. He was attending A.A. and the mother self-reported she was abstaining from substance abuse. In August 2000 the file in Case Management was moved to the Long Term Unit.

There are various interventions from November 17, 2000 to February 26, 2001 where the Agency found the situation in the home acceptable. Notwithstanding that, at the time the mother owed \$1,000.00 for power and milk bills and had been spending some of her money on gambling.

Mice became a problem in her apartment in June 2001. An Agent entered the apartment and found "hundreds of mice droppings" in the child's clothing in the drawers. It took from June to November 6th for the mother to obtain an alternate residence. She had available to her strong support services to assist in locating an alternate apartment. The mother admitted that she felt she was going to hit her son.

On July 11, 2001, G.R.H. was admitted into the hospital in an intoxicated condition and returned home. There were ongoing mental health problems.

The record notes on July 27th that the mother's ability to cope was deteriorating . On August 1st it became clear that she was unable to cope. The apartment had a continuing problem with mice and was in bad shape. G.R.H. had been drinking before an access visit. There was a notable deterioration in the parents. While the child was in voluntary care the mother was supposed to be addressing the concerns, on or about that time the mother passed out at the

[...] Club and was taken to the hospital. On August 2nd the mother felt she was having a breakdown. The Agency brought her to Legal Aid and to the Nova Scotia Hospital. On October 2nd there was a case review.

In November 2001 the mother was enrolled in a parenting course. She missed the first 3 classes. On November 28th the mother was moving into another apartment. There was no power in the apartment because of her outstanding bill with the power company. By December 5th she still did not have power. On December 14th the child was moved home. She gave a set of keys to this apartment to G.R.H. despite the historical concerns about this relationship and its effect on her ability to parent. The Agency noted some progress in that T.L.S. reported she remained separate from G.R.H., was attending counseling, and moving from her mice infested apartment to a new apartment.

POLICE INVOLVEMENT

On December 30, 2001, there was an incident that triggered the re-apprehension. The police were called to T.L.S.'s residence. In her police statement she acknowledged that G.R.H. came to her apartment because he was aware she was with another male friend in the apartment. G.R.H. proceeded to kick the front entrance of the apartment, breaking the bottom window pane. He entered the apartment and started arguing with the male

friend. There was a confrontation. G.R.H. left the apartment and within 4 - 5 minutes T.L.S. heard a crash at her kitchen door. G.R.H. returned, tried to enter the apartment, left again, went to the front of the apartment, picked up a large piece of ice and threw it at the child's window, breaking it. There was glass inside the room. The child had been awakened by the noise and broken window in his bedroom. When T.L.S. arrived in his room after the window was broken she found P.M.H. shaking in the corner of the bed, located just below the broken window.

Halifax Regional Police contacted the Agency. G.R.H. was released from custody on an Undertaking and "No Contact" Order. The parties did not abide by this Order.

There has been prior police involvement investigating this domestic relationship. On July 11, 1999, the police were called in response to a complaint from T.L.S. that G.R.H. assaulted her. She requested their assistance to obtain her possessions from the apartment.

On August 12, 2000, the police were called by a tenant in the apartment building because T.L.S. was "highly intoxicated", yelling and attempting to enter G.R.H.'s apartment in the same building. The police were told she was very

intoxicated and had the care of a 2 year old child. The police contacted a babysitter to ensure that the child would not be left with T.L.S. and referred the matter to Child Protection.

In December 2001 it was clear that access to G.R.H. was supposed to be supervised yet T.L.S. attended unsupervised access shortly after an incident where G.R.H., while under the influence of alcohol, threw a chair across the room.

PARENTAL CAPACITY ASSESSMENT

With the consent of the parties, Mr. Whitzman undertook a parental capacity assessment. The purpose of this was to assess the parenting plans of T.L.S. and G.R.H..

The Assessment dated April 17, 2002, itemizes the issues that remain outstanding including: domestic violence, substance abuse and parenting concerns.

Mr. Whitzman had the benefit of Dr. Cox's psychological reports. These reports were not optimistic concerning the ability of either parent to make the necessary changes required to parent their child. Mr. Whitzman was particularly

concerned that no significant changes occurred after the second apprehension.

He concluded:

She...lacks the necessary skills to parent on a long-term basis. She clearly loves her son and does fine for a short visit but cannot make the necessary life style changes required to do this job on the long term basis....her individual needs will override her ability to be a consistent parent.

Mr. Whitzman did not believe that either parent had the ability to parent on a long term basis. He recommended the child be placed in permanent care with adoption as a goal.

The critical concerns included: the serious domestic violence, substance abuse and the mother's tendency to enter into relationships with individuals like G.R.H. who subject her to violence and the child to domestic instability.

The concerns also include an issue of mental health and the mother's on-going instability, her inability to manage her finances, her gambling which has resulted in financial concerns and residential instability.

It is noted and confirmed in the evidence that there has been a consistent lack of follow-through on services that have been provided.

I will not reiterate the history of the relationship between the mother and G.R.H. as outlined in the psychological assessment report by David Cox, and Mr. Whitzman retained for the purpose of assessing the parenting plans put forward by the mother and father.

Consistently the assessors have indicated that the mother is a pleasant and cooperative individual, open to their discussion and to answering questions about her history. Notwithstanding her frankness, she has had a history of depression, emotional insecurity, residential insecurity and relationships which have subjected her to significant violence. She has had three children, one of whom she believes was murdered by a former boyfriend and pimp while she and he were in the throes of a relationship steeped in drug and alcohol abuse. Inquiries have been made with respect to that and the Agency has been unable to determine a place of birth for this child.

T.L.S.'s first child, T.A.H., born [in 1986], has been raised by the maternal aunt and uncle since he was one year of age.

T.L.S. experienced seven years of being drug free until she met G.R.H. They engaged in a relationship fraught with domestic violence and drug and alcohol abuse. While there have been briefs periods in which drinking and

violent activity have been suspended, the general course of their relationship has been fraught with significant difficulties. It is only recently, since July, that the mother has been able to extract herself from the relationship with significant supports and sustain a separation from G.R.H.. While she has had a number of relationships since that time, none are lengthy and by self-report none have subjected her to the violence she has experienced in the past.

Her doctor has provided her with medication to assist her in reducing her anxiety. However, she continues to use marijuana which has impaired the ability of the anti-depressants to assist her. She herself has stopped the anti-depressants and has not continued a course of therapy that would adequately address the depressive symptoms.

Random urinalysis was a service provided by the Agency to assist her in remaining drug free. She has not been able to comply with the provision of any urine samples. She has convinced Mr. Whitzman that she has significant difficulties in participating in this and is able to provide a urine sample in her doctor's office because of the privacy afforded her. She admits she continues to use marijuana on a regular basis and denies any on-going alcohol use. With the absence of the results of random urinalysis there is no evidence that she has been drug free for any period of time as asserted by her.

T.L.S. has been provided counseling services through Ms. Beaton. She did not attend on a consistent basis and did not engage with Ms. Beaton. There was a delay in providing her with an additional counselor to deal with her problems and that delay was admittedly caused by the Agency. However, she has not, in a time period, significantly engaged with the second counselor other than a support worker (social worker) with her current housing situation. Her involvement with this social worker, while positive, does not provide sufficient evidence of significant change that would put her in the near distant future in a position to receive her child back.

The counselor with whom she has successfully engaged, admits that she is there for support purposes and that there is a need for therapeutic counseling from a service such as that offered by the Minister of Community Services.

T.L.S. was required to attend at the C.O.R.E. Program to complete a drug assessment and to pursue any recommendations that would address her on-going substance abuse problems. From the beginning of this protection proceeding to the date of the hearing, she has not successfully completed this drug assessment process and therefore has not followed up with any anticipated recommendations.

G.R.H. has a history of drug and alcohol abuse. He has, as has T.L.S., been involved in cocaine use, alcohol use and marijuana use. He has admitted to on-going marijuana use and has not involved himself in the presentation of a plan to the Court. He is not an active participant at this time in this proceeding and has not followed up with the services provided sufficiently to place him in a position of parenting the young child before the Court. He has no plan to put forward and has not appeared for the purposes of the protection hearing.

It was G.R.H.'s violence in December of 2001 which precipitated the re-apprehension of this child and placement in foster care. There is very little understanding of the emotional impact of this violence.

Mr. Whitzman acknowledges that T.L.S. has been open and forthright with him. When he attended for the extended home visit, her apartment was clean and organized. The interchange between the child and his mother indicates an attachment and that the mother was able (while present with the child) to focus on the child's physical needs appropriately for the period of time required.

Mr. Whitzman referred to the psychological assessment report; reviewed Ms. Beaton's report; the family skills worker's report; and the access supervisor's

report and concluded that there was little chance that the problems T.L.S. and G.R.H. have would not continue to follow them into the future.

While he acknowledges the separation, he noted that T.L.S. continued to experience financial difficulties such that at the date of his report (April 2002) she might be evicted from her apartment and was a resident of Bryony House and P.M.H. continued to question whether he was the biological father. He further noted his concern about the lack of progress that occurred in the three months following the re-apprehension and the distance T.L.S. would have to go to place herself in a position to be able to parent her son on a full time basis. He acknowledged her love for her son. He acknowledged that she was able to maintain short visits but confirmed that in his opinion that she could not make the necessary life style changes required to parent her son on a long term basis. It is his opinion that "her own individual needs will override her ability to be a consistent parent." He confirmed his belief that G.R.H. did not have the necessary skills or desire to parent the child on a long term basis. His drug problem was long standing and unlikely to change.

PSYCHOLOGICAL ASSESSMENT REPORT

The matter was referred to Mr. Cox, a psychologist, for a psychological assessment. His report is dated February 25, 2002. He examined the extensive case history with respect to the Agency's concerns.

In the course of the assessment T.L.S. admitted that she had been involved with drugs and alcohol at the time she was in late adolescence. The continuation of the alcohol and drug abuse from late adolescence to the current day is marked by a failure to follow up on addiction related services. Although there was a consistent failure to follow through, it is clear that the professionals were unanimous in concluding that T.L.S. appeared willing to learn and anxious to resolve the problems but was unable to sustain follow through.

T.L.S. admitted that she had continuing contact with G.R.H. despite a restraining order. She admitted having some insight into the serious dangers to P.M.H. occurring as a result of the ongoing substance abuse in P.M.H.'s presence. She admitted to Mr. Cox that she only attended 3 segments of the C.O.R.E. Program over a 2-day period.

The Assessment does not disclose an intellectual impediment prohibiting T.L.S. from making the right decisions with respect to addressing the concerns

noted. While the assessor found her to be “sincere, well meaning and likeable” she is currently unable to care for her son. He admitted she had “some beginning insight ... but has been prevented from doing so by long standing behavior in relationship patterns, substance abuse, cognitive limitations and both chronic and acute mental health difficulties”. He did note that there was little reason to expect that T.L.S. would be in a position to parent P.M.H. satisfactorily as long as she remains in the relationship. Mr. Cox noted at page 13 of the February 25, 2002 report:

“T.L.S. perceives situations and makes personal decisions on the basis of her most immediate needs and pressures, and loses sight of longer-term priorities and the consequences of her actions for herself and her son. Without substantial support and direct guidance, she does not have the ability to adequately make sense of her situation, set priorities, resist deeply ingrained behavior and relationship patterns, and make decisions which are not self-defeating and which move her in the direction of being better able to parent P.M.H.”.

Ironically T.L.S.’s failure to follow through “with essential services and supports have kept her and the Agency from even beginning to determine whether she can break previous patterns and provide a safe and secure home for P.M.H.. Even if she accesses these services, the outlook for positive change is unfortunately very guarded”.

Mr. Cox recommended that before serious consideration be given to the possibility of P.M.H.'s return home, T.L.S. needed to demonstrate "without further delay" her ability to access and consistently use needed services. He recommended giving her what assistance she needed and "if these and other beginning changes are not underway within specific time periods defined by the Agency and provided under the **Act** it may be necessary to conclude the significant changes were unlikely to occur at all and that other options for P.M.H. should be considered".

ACCESS

Access coordinators have been provided for both parents for a considerable period of time. Both have exercised access fairly regularly. G.R.H. is no longer a contender in these proceedings and my focus will be on T.L.S..

Access has been in place for T.L.S. since P.M.H. was placed in the foster care program in August 2001 with the exception of 16 days spent in his mother's care in December of 2001. He has remained in foster care.

T.L.S. has been appropriate, faithful and consistent in attending all access visits except for the exceptional visits when circumstances were such that she could not. Generally speaking her interaction with her child was not only

appropriate but appeared to be positive. There were occasions during the course of the year, from December of 2001 to the current date, when he would display some difficulties during the course of the access visit. There is nothing, however, remarkable about his conduct and I draw no negative conclusions from it other than access under supervised conditions at the Agency is difficult at the best of times and somewhat an artificial environment. Essentially, the mother was dedicated and committed to these visits and managed well in the context of 1 ½ hours twice and sometimes three times a week.

Various other services besides access were provided to T.L.S. throughout. There was a family skills worker providing T.L.S. with support and parenting information in child development, discipline, child care, safety and parent/child routines and activities. In addition, the evidence is clear that these family skills workers and in particular the family skills worker who testified, provided strong support services to assist T.L.S. in getting to appointments and attempting to review apartment lists and searching out for apartments in financial budgeting and an advocacy with the various governmental departments and in other matters relating to T.L.S.'s difficult circumstances.

T.L.S. has also completed 12 out of 20 hours of the program, Nobody's Perfect Parenting Program, offered through the [...] Parent Resource Center.

In or about August 2001 the Agency indicated to T.L.S. that she should refer herself to the Nova Scotia Hospital for counseling to assist her with personal issues. The contact was not pursued subsequent to her initial contact with the Nova Scotia Hospital.

Individual counseling was offered through Ms. Peggy Beaton. T.L.S. was referred on August 15, 2001. She attended with Ms. Beaton on 17 occasions and canceled 5 visits. In or about the month of December 2001 she did not contact Ms. Beaton to re-schedule. At that time she had an ongoing relationship with G.R.H. which exacerbated her current difficulties.

There was to be a self-referral to Drug Dependency to deal with the substance abuse issues and the gambling issue. Commencing August 22nd she was advised to refer herself to Drug Dependency. She attended a screening group and an individual session with Carl Hall on March 21, 2002. She did not complete the process. An appointment was canceled by Ms. Cormier on April 11, 2002 due to the counselor's illness. T.L.S. did not follow up with this service or her attendance at C.O.R.E. She has advised she continues to use marijuana once per week and has been involved in drinking as of April 2002.

In August of 2002, the mother stopped taking her anti-depressant drugs. She was still accessing Drug Dependency services. At the time there was some concern because her rent remained unpaid and notice that she may be evicted from her apartment at [...].

In addition, she has been unable to participate in the random urinalysis due to her anxiety surrounding the giving of the urine sample in the presence of another adult. There has been no collection through the Comcare Services provided, in spite of the multiple attendances by the Comcare technician.

In summary, since the first intervention occurred in July and August of 1999, T.L.S. was referred to counseling and C.O.R.E. to address the outstanding issues. They have not been addressed adequately or significantly since that date.

In December of 1999 there were reported concerns by an Income Assistance worker regarding the physical attack by G.R.H. on T.L.S., his intoxication and the risk to the child. It was at this time that the Income Assistance worker learned of the circumstances of the untimely death of T.L.S.'s second child as related by T.L.S.. They have never been able to substantiate the birth of this child.

In June 2000 G.R.H. was on probation for hitting T.L.S.. In August 2000 the police made a referral as a result of their finding T.L.S., with P.M.H. in her primary care, very intoxicated.

At a Risk Assessment Conference on September 27, 2000, the file was opened for long term follow through, and the parties were referred to substance abuse treatment, anger management and counseling.

In November 2000 T.L.S.'s money problems escalated as a result of her gambling difficulties and other difficulties.

In January 2001 a formal Supervision Order existed. At that time neither party was engaged in services.

The Agency noted a small amount of positive movement in the case between January and February of 2001. A family skills worker was involved and in April the Agency concluded that they were working well with T.L.S. and she was being cooperative. G.R.H.'s difficulties continued. T.L.S. was encouraged to leave G.R.H..

As a result of the deterioration of the circumstances in the household to August 2001, T.L.S. signed a Voluntary Care Agreement on August 24, 2001. The child's behavior began to be noticeable in the household. T.L.S.'s own mental health difficulties were exacerbated by the household's difficulties.

The circumstances surrounding the difficulties facing the child and the risk to the child are better defined in the Plan of Care and includes such things as the apartment being overrun with mice and her young son finding and holding a bowl of mice poison in his hands .

The child is now 4 years old. He has been in foster care since December 2001. It is critical that a long term placement plan be put in place for him.

The evidence from both assessors (Mr. Whitzman and Mr. Cox) is clear and unequivocal. They are of the firm opinion that there is unlikely to be significant change in the foreseeable future that would place T.L.S. in a position where she could adequately parent P.M.H.. On short term visits she is able to manage and her child is attached to her. She has finally, for a short time, managed to separate from G.R.H.. This change has required significant intervention and support. There is no certainty as to whether she can sustain this separation.

The child is doing well in foster care and his very basic needs, as well as his more sophisticated and long term needs are being met there.

The legislation allows T.L.S. further opportunity between January and June 2003 to access services to improve her situation and try to make sufficient progress to place herself in a position to parent her son. It is open to the Court to maximize the time available to T.L.S. to avail her of more time to facilitate a return of her son to her care within the legislated time lines.

There is no unconditional right to maximize the time limits set out in section 45 of the Act. In **Pace v. The Minister of Community Services** (C.A. No. 184081) the Court of Appeal addressed this issue as follows:

Any service based measure intended to preserve or reunite the family unit, must be one which can effect acceptable change within the limited time permitted by the Act. If a stable and safe level of parental functioning has not been achieved by the time of the final disposition ...the Act does not contemplate that the Agency shore up the family indefinitely .

When a Court weighs the evidence to obtain a perspective on future behavior, historical conduct is a serious factor to consider. In this situation historical conduct both before and after Agency involvement is consistent even as the services were offered on a voluntary and mandated basis. The mother has

been unable to sustain a commitment to therapeutic services made available to her to assist her in making the necessary changes.

There is strong professional evidence to indicate that this there is unlikely to be sufficient or significant change to put T.L.S. in a position to parent. The history of this file and the history of T.L.S.'s personal circumstances indicate that it is unlikely that such a change can take place sufficiently to put P.M.H. in her care in June, 2003. Her attendance and commitment to pursue her counseling would be of tremendous benefit to her personally, but it will not place her in a position in the foreseeable future where the Court will be able to return the child to her care.

The child's interests must come first having regard to the directives in the Act and long term planning must take place in order to place this child in a position which will reflect his long term best interests.

I grant an order for **permanent care with no order for access**, anticipating that the appropriate access arrangements will be made to allow the mother and child to bring their contact to an appropriate close for both the mother and the child.

J.

(Halifax, Nova Scotia)