

Publishers of this case 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.”

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

**Between: MINISTER OF COMMUNITY SERVICES** **Applicant**

- and -

**S.M., C.S., AND J.W.** **Respondents**

- and -

**R.W. AND E.W.** **Third Parties**

**Revised Decision:** The text of the original decision has been revised to remove personal identifying information of the parties on September 25, 2008.

**Decision**

**Heard Before:** The Honourable Justice R. James Williams  
Justice of the Supreme Court (Family Division)

**Place Heard:** Supreme Court, Family Division  
3380 Street Name Changed  
Halifax, Nova Scotia

**Dates Heard:** June 18, 19, and 20, 2003

**Decision:** July 31, 2003

**Counsel:** Shannon Ingraham, counsel for Minister of Community  
Services  
Linda Tippett-Leary, counsel for S.M.  
Peter Crowther, counsel for C.S.  
Colin Campbell, counsel for R.W. and E.W.

**WILLIAMS, J.S.C. (F.D.):**

This is a proceeding pursuant to the **Children and Family Services Act**. It concerns the child M.E.C.S., born [in 2002]. The issue before the court is whether M.E.C.S. should be placed in the permanent care and custody of the Department of Community Services pursuant to s. 42(1)(f) of the **Children and Family Services Act** or placed in the care and custody of her paternal grandparents R.W. and E.W.. C.M., M.E.C.S.'s mother supports the plan of the W.s. S.M., the child's maternal grandmother is a party to the proceeding. She put forward no plan and does not oppose the agency plan. J.W., the child's father, chose not to participate in the proceeding.

**HISTORY OF THE PROCEEDING:**

1. This proceeding was initiated by a Protection Application dated July 4, 2002. She had been in the care of her mother, C.S. and maternal grandmother, S.M.. Her father, J.W., was at the time incarcerated in the Nova Scotia Youth Centre in Waterville. E.W. and R.W. provided some weekend care.

The July 4, 2002 affidavit of Kandi Swinehammer (a social worker with the Department of Community Services) summarizes the agency's reasons for intervening (at paragraph 18):

A pattern of violence and relationship troubles between S.M. and C.S. dating back to April 1999.

The recent deterioration in the home, including building conflict between S.M. and C.S..

The inability of C.S. to parent alone, as evidenced by recent lack of commitment to the child, placing the infant at risk by leaving her unattended.

S.M.'s lack of stability, and her lack of commitment to her own daughter, C.S., as well as her inability to handle C.S. or protect the baby from aggression. S.M.'s own admissions to physically harming C.S. on several occasions were also noted, as were concerns about her alleged drug abuse and lack of treatment.

M.E.C.S. was placed in a foster home on July 3, 2002.

2. The first appearance in the proceeding was July 10, 2002. C.S. appeared with counsel. S.M. appeared without counsel; she was named as a party as she had the care of M.E.C.S. with C.S.. J.W. was served but did not appear. E.W. and R.W. appeared with counsel as interested persons. The matter was adjourned to July 24, 2002. M.E.C.S. was left in the temporary care of the agency.
3. On July 24 the Interim Hearing was completed. All principals appeared with counsel. C.S. sought to have M.E.C.S. placed with her (C.S.'s) mother, S.M.. J.W. wanted her placed with his parents, the W.s. Counsel sought additional time to review the file. The temporary care order was continued. The W.s sought party status.
4. On September 6, 2002 by consent M.E.C.S. was found in need of protective services pursuant to s. 22(2)(k) of the **Children and Family Services Act**.

**22(2)(k)** A child is in need of protective services where the child has been abandoned, the child's only parent or guardian has died or is unavailable to exercise custodial rights over the child and has not made adequate provisions for the child's care and custody, or the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the

child's care and custody;

It was agreed that a parental capacity assessment would be secured through Assessment Services at the I.W.K. Grace Hospital. There was no consent to the W.s having party status but they agreed, through counsel, to defer their application.

5. A Disposition Order providing that M.E.C.S. remain in the temporary care and custody of the Agency was granted December 10, 2002. Trial dates of June 16-20, 2003 were set. The Agency was seeking a Permanent Care and Custody Order. All other parties opposed this.
6. A pre-trial conference was held January 7, 2003. The pre-trial memo from that appearance provides in part:

Mr. Crowther indicates on behalf of his client, C.S., that she continues to oppose the permanent care application. He is of the view that the Agency should be providing services and advocacy to his client. There was a direction that he advise the Agency in writing on or before January 31, 2003 of the specifics related to this expectation. The court assumes that there would follow some discussion between the Agency and Mr. Crowther and his client regarding those expectations. In the event issues arise from this exchange they can be reviewed at the next appearance.

Ms. Tippet-Leary's client, S.M., continues to oppose the permanent care application. She agrees at this time with the discontinuance of the counseling services through Ms.

Garland provided, however, that the services of a family skills worker and assistance with transportation (bus fare) continue.

Mr. Campbell indicates on behalf of his clients, the W.s, that he anticipates that they will move forward with a plan and that they will seek party status. The Court requests that Mr. Campbell and Mr. Katsihits file letters with the Court outlining the plan or plans being put forward by the W. family members indicating whether it is a joint plan or whether Mr. Campbell's and Mr. Katsihit's clients have separate plans and indicating what, if any, adjustments or accommodations to the trial process they would feel reasonable as a result of those discussions.

The Agency will advise Mr. Campbell, copying the letter to the other parties and the Court, of their position with respect to the application for standing by the close of the work day February 14, 2003.

The matter has been set for a 15 minute disposition review to February 18, 2003 at 9:45 a.m.

7. A disposition review, as statutorily required, took place February 18, 2003. It was agreed that the Temporary Care Order would be continued. J.W. indicated through counsel that he did not wish to actively participate, have representation or attend the trial.
8. On March 5, 2003 J.W. appeared and confirmed his intention to effectively abandon the proceeding. It was agreed that the W.s would be treated as parties with respect to disclosure and that their application for leave/standing would be dealt with at trial, not before.

9. An organizational pre-trial was held April 14, 2003. By consent the February 18, 2003 Temporary Care Order was renewed.
10. On May 7, 2003 scheduling issues were addressed.
11. A pre-trial was held June 4, 2003. Counsel for S.M. advised she would not be putting forward a plan and was not opposed to a Permanent Care Order. Counsel for C.S. indicated she was not putting forward a plan, though she preferred a family placement (the W.s) to a Permanent Care Order. The only alternative plan to the Agency's was that of the paternal grandparents, the W.s. The trial dates were reduced to three days, from five days.
12. The trial took place June 18, 19 and 20, 2003. Evidence was called from B.S., B.P., Dr. Otto Mann, Anita Gazzola, Maureen Carew, Debbie Johnson-Emberly, Mimie Sihapanya, C.A., W.B., A.C., J.L., Linda Murphy, R.W., E.W. and Dr. John Sperry. Examination on a number of other witnesses was waived. The Temporary Care Order was renewed. The decision was reserved.



13. Submissions from counsel were received by June 26, 2003.

I have had an opportunity to review and consider the evidence of each witness and the affidavits, reports and records filed.

**THE AGENCY PLAN:**

The Agency plan, dated December 6, 2002, seeks an Order pursuant to s. 42(1)(f) of the Children and Family Services Act, placing M.E.C.S., born [in 2002], in the permanent care and custody of the Department of Community Services. The plan proposes that there be no order for access, that M.E.C.S. be placed for adoption.

The plan considers alternative (to parental) placements including S.M. and the W.s.

The plan emphasizes M.E.C.S.'s age, infancy and, by implication, the provisions of the legislation that refer to it.

The only alternative to the Agency plan is that put forward by E.W. and R.W.. It is supported by C.S..

The burden of proof in these proceedings is on the Agency. It is a heavy, significant civil burden.

### **THE STANDING ISSUE:**

In the end, there was virtually no opposition to the W.s being granted party status. I have no hesitation in granting them that status. They are interested, concerned and committed in putting forward their plan.

### **THE W. PLAN:**

E.W. and R.W. seek to have M.E.C.S. placed in their care either now or in the immediate future. Their counsel points out that the Court has jurisdiction in this matter for one year from December 10, 2002, the date of the first disposition order (by virtue of s. 45(1)(a) of the **Children and Family Services Act**).

E.W. (born [in 1960]) and R.W. (born [in 1959]) have been married for close to 20 years. They have two children, J.W. (born [in 1985]) and S.W. (approximately 13). S.W. is doing very well in school and does not appear to have any significant adjustment problems or issues that are relevant to

this proceeding.

E.W. appears to be a remarkable woman. She is (as a result of R.W.'s medical problems) the principle wage earner of the family, working as a personal care worker. She has visited M.E.C.S. weekly since shortly after M.E.C.S. came into care. She has cooperated with the Agency. J.W. has had extremely serious problems. She has done everything a parent could do to help him - facilitated and cooperated with counseling, supported non-family placement, stood by him. Her commitment to her husband, R.W., is, if anything, more admirable. It appears that there were alcohol and other problems early in the marriage. Two strokes and a heart attack have dramatically changed R.W.. E.W. appears to have been, in a word, a rock in dealing with his limitations.

R.W. suffered two strokes (in 1998) and a heart attack (in 2001). His doctor, Dr. Otto Mann, has said unequivocally that R.W. is not able to look after children. Dr. Mann described R.W.'s circumstances. R.W. suffers from multiple, severe medical problems. He suffered brain damage from alcohol use, then the stroke(s). He has chronic pain. He has a short attention span. He has short and long term memory deficits. He has

cognitive problems, limits. He is somewhat unsteady on his feet. He has arthritis. He suffers from panic attacks and is not comfortable outside his own home. (His portion of the assessment was moved to his home to accommodate this.) His multiple medications make him drowsy. His vision has been affected. He is at moderate/high risk of further strokes. He needs notes to remind him of everyday functioning. He is **very dependent** upon E.W.. He said, "My wife has to teach me things." Like E.W., R.W. appears to have done everything within his abilities to address J.W.'s problems.

E.W. indicates that if M.E.C.S. was in their care she would take a year off work. A friend, J.L., and sister, L.M., have expressed a willingness to help with child care. J.L.'s evidence suggested she would expect "reasonable pay". While it appeared that their support had been discussed only in general terms, it appeared sincere.

The joint affidavit of E.W. and R.W. of May 27, 2003 outlines their plan (paragraphs 7-16).

7. In the event that M.E.C.S. [*sic*] was placed in our care I, E.W., would take one year off from work to stabilize M.E.C.S. in our home and reintroduce her to my sister, L.M., and my friend, J.L.. When I return to work either of them or

both of them would be M.E.C.S.s care giver when I was at work.

**8.** We understand that, in part, the concerns of the Minister have related to our son, J.W.. We recognize that J.W. has had problems but we have always attempted to meet these problems head on. J.W. has been brought to numerous therapists - drug counselor, child psychiatrist and child psychologist. We placed J.W. in a group home for one month on recommendation of his therapist, Brian Parris.

**9.** J.W. is now 17. He lives at home with us. We are trying to encourage J.W. to take an upgrading course in September to complete his high school education. J.W. has goals to join the Armed Forces.

**10.** J.W. has not had any further criminal charges laid against him since May 2002. He worked at a fish plant for a couple of months. As well he worked as a laborer in construction for a couple of weeks. He has been looking for other employment.

**11.** J.W. recently became the father of another child, A.B., who is now three months of age. J.W. gets along well with A.B.'s mother, A.. They are no longer dating but are friends. J.W. sees A.B. 2 or 3 times a week at A.'s uncle's. We, as well, have had contact with A.B. - A. visits with A.B. 5 or 6 times a month.

**12.** I, E.W., have always had a close relationship with J.W.. He has never been physically abusive to me. I see a lot of signs of maturity in J.W. over the last year.

- (a) He now asks for and listens to our advice.
- (b) He is more willing to help out around the house.
- (c) His relationship with his father, R.W., is much improved.
- (d) He is acting very responsibly with his new child.

**13.** I, R.W., acknowledge that there was a period when J.W. turned 13 and I had a stroke that our relationship was poor. However, when J.W. was released from jail last year things have changed for the better. We are now able to talk to each other. J.W. has matured a lot in my view.

**14.** We have discussed our plan to care for M.E.C.S. with

J.W.. We have told J.W. that we would be the ones in charge of M.E.C.S. and be making the decisions regards [sic] to her. He is accepting of this fact.

**15.** We have as well discussed our plan with our son S.W.. S.W. remains in favour of our plan. S.W. is completing grade 6 and had an excellent year in school.

**16.** We are prepared to care for M.E.C.S. for the long term. In the event we are granted custody it would be our intent in the future to apply to adopt M.E.C.S..

Between May 27, 2003 and the trial dates in mid-June J.W. moved out of their home into the home of a friend a few doors down the street.

The evidence of both E.W. and R.W. leads me to conclude they would have **great** difficulty in saying no to J.W. were he to want to return to their home.

### **J.W. AND HIS PARENTS:**

J.W. did not testify in this proceeding. He has not participated in it since January 2003. He is 17, almost 18. He has not finished high school. He is M.E.C.S.'s father. He has not exercised access to her. He has fathered another child by another young woman. He has failed to follow through with a number of therapeutic, counseling, drug and/or anger management programs, including those available while he was in

Waterville Youth Detention Centre. There is no prospect of him committing to and completing any such programs in the immediate future. The record before me indicates that J.W. is unpredictable and has significant problems with anger and impulse control.

He has a number of Youth Court convictions, including:

May 8, 2000	s. 145(3) CC	failure to comply with an undertaking
May 15, 2000	s. 266(a) CC s. 26 YOA	assault failure to comply with a disposition
May 23, 2000	s. 355(a) CC s. 335(1) CC s. 26 YOA S. 26 YOA	possession of property obtained by crime over \$5,000 taking motor vehicle failure to comply with a disposition failure to comply with a disposition
January 26, 2001	s. 145(1) CC	failure to comply with an undertaking
February 22, 2001	s. 145(1) CC	failure to comply with an undertaking
April 11, 2001	s. 145(3) CC	failure to comply with an undertaking
May 7, 2001	s. 264.1(1)(a) CC	uttering threats
October 10, 2001	s. 145(1) CC	failure to comply with an undertaking
June 3, 2002	s. 334(b) CC s. 26 YOA s. 266(b) CC	theft under \$5,000 failure to comply with a disposition assault

There are fifteen convictions. ***Both assaults were against his***

**father R.W.** (subsequent to the strokes suffered by R.W.). A number of J.W.'s convictions are as a result of his failure to comply with court orders or undertakings. I conclude that there is little or no chance of him complying with conditions this court might impose on his behavior.

The W.s asserted that J.W. had no convictions since May of 2002. This is correct. There was police involvement, however. Two incidents were referred to and are described in the police records. They were acknowledged by the W.s. The police records indicate:

1. From an incident report requesting charges (of property damage and breach of an undertaking) relating to a domestic situation between a father and son (R.W. and J.W.) re: November 21, 2002:

J.W. awoke, came upstairs hollering at his father, wanting to know where the phone was. His father indicated that it was upstairs. J.W. got extremely upset and started cursing at this father, calling him names. His father recovered the phone, gave it to J.W. who went to the basement. There was some exchange of words and as a result father indicated that J.W. was not permitted to use the phone. He refused to give the phone back. His father disconnected it at the base. J.W. came up to the living room, threw the phone across the room and went back downstairs. There was a commotion. A couple of loud bangs were heard and J.W. then returned upstairs hollering and cursing at his father.

J.W. then went to the kitchen, grabbed the kitchen plates



and returned to the hallway directly in front of his father and smashed the plate to the floor, breaking it into pieces. He returned to the kitchen briefly, told his father, "There, you have something to charge me with, go ahead and call the police. Charge me. I want to go to jail." He then left the house. His father saw him shoving items into his pocket indicating, "Call the police. Tell them I will hurt them if they try to arrest me."

The father, R.W. called the police and provided a statement to the fact that his son J.W. had committed damage in the basement of the house by knocking the holes through the wall with a milk carton and by smashing the plate on the hallway floor and by violating an undertaking issued to him on February 25, 2000 whereby he signed it in Dartmouth Provincial Courts placing him on probation for an 18 month period. See Probation Order number 433587.

Upon leaving the house J.W. is believed to have taken two steak knives and a hammer which may have been taken for the purpose of having a weapon in his possession.

Witness #1 R.W.

R.W. will say that he was involved in an argument with J.W. and J.W. smashed a plate in front of him. He can also say that he heard loud bangs in the basement and upon examining the basement after J.W. left discovered two new holes in the basement made by egg cartons and could see the drywall dust on the egg cartons.

2. From a report relating to events on March 18, 2003 involving J.W.'s theft of valuables from his parents' bedroom:

J.W. was located by the writer and was interviewed. At that time he admitted to taking both the change and the silver ingot. He returned same to the victim who did not wish to pursue the matter criminally.

The Assessment Services Report (authored by Maureen Carew,

Mimie Sihapanya and Debbie Johnson-Emberly and dated November 28, 2002) is explicit in addressing issues arising from J.W.'s behaviour and the home of R.W. and E.W..

(p. 47) There is a concern in this family constellation that there continues to be a conflicted milieu which has resulted from the parents inability to effectively problem solve and deal with the stress of the violence in the home, in particular between R.W. and J.W. and the added stress of their son's anti-social behaviour... *(This was written without knowledge of the events of November 21, 2002 and March 18, 2003 but effectively predicts them.)*

...J.W. has been destructive in the home and physically aggressive to his father. He still has an anger management problem... There continues to be safety issues for the parents and younger son in this family...

(p. 48) There are serious concerns about the safety of M.E.C.S. in the home where there are documented violent episodes and no objective evaluation of the change in J.W.'s aggressive behaviour towards his father...

Alan Paris, a counselor with Choices Adolescent Treatment Program tried to work with J.W.. In May 2002 Mr. Paris recommended an intensive treatment program re anger, conflict, not listening to rules. J.W. said, "No." Mr. Paris recommended at one point that J.W. be placed outside the home. He was concerned about physical safety in the home if J.W. remained. This appears to have followed the incident described in the police records as follows:

On Tuesday April 20, 1999, police were called to [...] Street, in report of a father having a problem with his son, complaining about being assaulted by his son. Upon arriving

Cst. Shirley met R.W., the father, who was obviously upset, shaking and nervous. His son J.W. had left prior to police arrival.

R.W. indicated to the officer how his son came home from school, it basically started around 4 pm, where he became belligerent in that his parents were going to ground him for a poor report card. J.W. wanted to here [sic] none of this, marched into his room, took a tantrum, throwing things around, turning over furniture, smashing things, and cursing and swearing and yelling. E.W. the mother went in to calm him down and try to reason with him and he threw his jacket at her in disgust and began to yell at her. This is when R.W. became involved, warning him not to do anything like that again to his mother. It was at this time that both E.W. and R.W. had both stated that J.W., in their terms, really flipped out. He started swinging and kicking at his father, his father blocked it to protect himself and gathered the expensive electronic [sic] equipment, TV, Nintendo, etc. from the room as he feared J.W. was going to smash that. R.W. put it in his bedroom down the hall. J.W. came out of his bedroom and into the hall and started smashing ornaments belonging to E.W., cursing and swearing and yelling and actually charged his father down the hall, pinning him up against the bedroom door. J.W.'s main concern was that he wanted to get sneakers and leave and go to his friend J.'s house. His father reminded him he was grounded. He wasn't going anywhere. J.W. continued to push on R.W., who noted to the officer that he has had two strokes in the past. Somewhat paralyzed to his right side and J.W. was hurting him. It was here R.W. said he brushed him off, J.W. stumbled backwards and then got up and charged at his father, grabbed him by the throat and squeezed rather hard. R.W. indicated that he kept his arms to the side and offered no resistance.

It was at this time that E.W. came around the corner after hearing the commotion and saw J.W. squeezing around R.W.'s throat with his hands, and his fists pumped in a fashion where he looked like he was going to punch his father. She screamed at J.W. who eventually let go. He went back into his room, curse [sic] and swore a bit. Eventually E.W. got on the phone [sic] to a Choices program where he has been attending for counseling and they advised them to call police. E.W. went down to the Choices program at the Nova Scotia Hospital to attend a meeting in

hopes of seeking assistance. R.W. in fact called the police. E.W. stated that when she left for the meeting J.W. was still home. R.W. indicated that he tried to reason with J.W., stating he wouldn't call the police if he would just calm down, J.W. wanted no part of it, got his shoes on and took off. He is believed to be in the [...] Street area.

Two doctors in 1998-1999 apparently diagnosed J.W. with Oppositional Defiant Disorder.

J.W. was placed at [...] House through a child welfare agency shortly after this. The placement was not maintained for a lengthy period.

Some considerable comment was made by the assessors and agency witness concerning differences in parenting styles between R.W. and E.W. related to J.W.. R.W. was said to be more rigid, E.W. to not deal with some of J.W.'s problems directly enough. J.W. has presented them with extraordinary and unfortunate challenges. I do not accept their evidence or that of L.M. or J.L. suggesting that J.W. "has improved". Events the family did not report or disclose were only discovered through the police records. J.W.'s problems at home have continued.

J.W. has not had the control or wherewith all to support his parents' application or to verbalize that he would remain out of their home. He is

their son and they do not, I conclude, have the ability or desire to keep him out or to expel him. His presence creates a significant and real risk to the emotional and physical well-being of those in the home, including potentially M.E.C.S..

## **THE STATUTE:**

The **Children and Family Services Act** mandates that I consider (and I have considered):

1. The Preamble of the **Act** which provides:

WHEREAS the family exists as the basic unit of society, and its well-being is inseparable from the common well-being;

AND WHEREAS children are entitled to protection from abuse and neglect;

AND WHEREAS the rights of children are enjoyed either personally or with their family;

AND WHEREAS children have basic rights and fundamental freedoms no less than those of adults and a right to special safeguards and assistance in the preservation of those rights and freedoms;

AND WHEREAS children are entitled, to the extent they are capable of understanding, to be informed of their rights and freedoms, to be heard in the course of and to participate in the processes that lead to decisions that affect them;

AND WHEREAS the basic rights and fundamental freedoms of children and their families include a right to the least

invasion of privacy and interference with freedom that is compatible with their own interests and of society's interest in protecting children from abuse and neglect;

AND WHEREAS parents or guardians have responsibility for the care and supervision of their children and children should only be removed from that supervision, either partly or entirely, when all other measures are inappropriate;

AND WHEREAS when it is necessary to remove children from the care and supervision of their parents or guardians, they should be provided for, as nearly as possible, as if they were under the care and protection of wise and conscientious parents;

AND WHEREAS children have a sense of time that is different from that of adults and services provided pursuant to this Act and proceedings taken pursuant to it must respect the child's sense of time;

AND WHEREAS social services are essential to prevent or alleviate the social and related economic problems of individuals and families;

AND WHEREAS the rights of children, families and individuals are guaranteed by the rule of law and intervention into the affairs of individuals and families so as to protect and affirm these rights must be governed by the rule of law;

AND WHEREAS the preservation of a child's cultural, racial and linguistic heritage promotes the healthy development of the child;

The provisions relating to family and to a child's sense of time are particularly relevant here.

2. Section 2 of the **Act**, which provides:

**2 (1)** The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.

**(2)** In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child. 1990, c. 5, s. 2.

3. Section 3:

**3 (2)** Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

**(a)** the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;

**(b)** the child's relationships with relatives;

**(c)** the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;

**(d)** the bonding that exists between the child and the child's parent or guardian;

**(e)** the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;

**(f)** the child's physical, mental and emotional level of development;

**(g)** the child's cultural, racial and linguistic heritage;

**(h)** the religious faith, if any, in which the child is being raised;

**(i)** the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;

**(j)** the child's views and wishes, if they can be

reasonably ascertained;

**(k)** the effect on the child of delay in the disposition of the case;

**(l)** the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;

**(m)** the degree of risk, if any, that justified the finding that the child is in need of protective services;

**(n)** any other relevant circumstances.

I have considered the whole of s. 3 and subsections (a), (b), (d) (e), (i), (k), (l), and (m) in particular.

4. Section 41(3),

**41(3)** The court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the agency and including:

**(d)** where the agency proposes to remove the child from the care of a parent or guardian,

**(i)** an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and

**(ii)** a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and

**(e)** where the agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement.



I have considered the agency and W. plans.

5. Section 41(5),

**41(5)** Where the court makes a disposition order, the court shall give

**(a)** a statement of the plan for the child's care that the court is applying in its decision; and

**(b)** the reasons for its decision, including

**(i)** a statement of the evidence on which the court bases its decision, and

**(ii)** where the disposition order has the effect of removing or keeping the child from the care or custody of the parent or guardian, a statement of the reasons why the child cannot be adequately protected while in the care or custody of the parent or guardian.  
1990, c. 5, s. 41.

These are my reasons.

6. Section 42(1),

**42(1)** 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.

I have considered all of the disposition orders available.

7. Section 42(2),

**42(2)** The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

**(a)** have been attempted and have failed;

**(b)** have been refused by the parent or guardian; or

**(c)** would be inadequate to protect the child.

The parents have not put forward individual plans. Supports have been offered. There is no intervention that would be adequate to protect the child in either parent's care.

8. Section 42(3),

**42(3)** Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

I consider this provision below.

**DECISION:**

IN **C.A.S. of Halifax v. T.B.** 2001 NSCA99 Justice Saunders commented on the Court's consideration of family placements or plans pursuant to s. 42(3) at paragraphs 30 and 31:

...Neither the agency nor the court is obliged to consider unreasonable alternatives. Their statutory obligation is nothing more than to assess the reasonableness of any family or community alternatives put forward seriously by their proponents. By "reasonable" I mean those proposals that are sound, sensible, workable, well conceived and have a basis in fact. The onus of presenting such a reasonable alternative must surely be upon the person or party seeking to have it considered...

Here a plan is put forward by two decent, caring, committed grandparents. Their plan cannot, however, be "assessed" in isolation. It must consider the **Act** as a whole, M.E.C.S.'s age and best interests, the

factors they can control and those they cannot, M.E.C.S.'s circumstances in their entirety, and the potential effect of services and supports. A placement with family is "possible" if it is consistent with the child's best interest.

The commitment of the W.'s to their children and grandchildren cannot be questioned. E.W. would take time off work if M.E.C.S. was placed with them. They have the support of friends and relatives (J.L. and L.M.).

There are, unfortunately, a number of factors that cause me to conclude that it is not possible to make an order placing M.E.C.S. in their care that is consistent with her best interests as defined by the **Children and Family Services Act**.

These factors include:

1. The W. family and their plan is extraordinarily dependent in every way upon one person, E.W.. E.W.'s other responsibilities are numerous and onerous. I have serious concerns about her ability to add to them with M.E.C.S.'s care.
2. R.W.'s limitations place significant pressure on E.W..
3. S.W. needs the care, guidance and attention of his parents.
4. The W. family is financially vulnerable. This is an additional stressor.

5. J.W. presents a real physical and emotional risk to those in the W. household. I conclude that no order would be effective in excluding him. He would not comply with it. Such an order would inevitably complicate or compromise the W. contact with another grandchild, A.B.. I conclude that there is no prospect of J.W. engaging in any program or counseling that would address or remedy these concerns in the time periods contemplated by the legislation. His leaving the home on the eve of the trial is of little significance. The W.s, despite his problems, love J.W., and are not able to cut their ties with him. He is their son. I do not suggest that they should abandon or banish J.W., only that there are consequences to his presence or potential presence. I conclude his presence is inevitable.
6. M.E.C.S. came into care primarily because a conflictual environment between C.S. and S.M. placed her at risk. I have no evidence to indicate that either of these individuals have developed interpersonal skills that are more constructive. I conclude that a family placement with the W. family would inevitably subject M.E.C.S. to conflict involving a combination of J.W., C.S. and S.M.. I can conceive of no service that could, given the histories available to me, manage such an amalgam of potentially conflictual interests.
7. M.E.C.S. is just over a year old. She is, in a word, vulnerable.

I cannot conclude that the W. plan, when considered in a broad context, is “sound, sensible, workable, well conceived and (has) a basis in fact”. One can wish that their plan could be evaluated in isolation of R.W.’s medical condition(s), J.W.’s problems, and the conflictual and problematic histories of C.S. and S.M.. It cannot.

I conclude that it is in the best interests of M.E.C.S., born [in 2002], to

be placed in the permanent care and custody of the Agency.

Section 47(2) of the **Children and Family Services Act** provides:

Where an order for permanent care and custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such 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 person's access will not impair the child's future opportunities for such placement;

(b) the child is at least twelve years of age and wishes to maintain contact with that person;

(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.

Here, the agency plan is to seek an adoption placement for M.E.C.S.. Permanent placement in a family setting will be sought. An Order for access would impair M.E.C.S.'s opportunity for placement. There will be no Order for access.

J.S.C. (F.D.)

