IN THE SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION
[CITE AS: *Children's Aid Society of Halifax v. C.V.*, 2004 NSSF 4]

Date: January 23rd, 2004
Docket: SFHCFSA029575
Registry: Halifax

Between:

CHILDREN'S AID SOCIETY OF HALIFAX

APPLICANT

v.

C.V. and L.F.

RESPONDENTS

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on May 13, 2008.

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

Section 94(1) provides:

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

Judge:	The Honourable Justice Deborah K. Smith
Heard:	January 15th, 2004, in Halifax, Nova Scotia
Oral Decision:	January 15th, 2004
Written Decision:	January 23rd, 2004
Counsel:	Elizabeth Whelton - for Children's Aid Society of Halifax

By the Court:

[1] This is an application by the Children's Aid Society of Halifax against C.V. and L.F.. On January 14, 2004 the Children's Aid Society applied under the **Children and Family Services Act** for a finding that M.C.F. who was born [in 2003] (and is therefore less than [....] of age) is in need of protective services under sections 22(2)(b) and (g) of the **Children and Family Services Act**.

[2] As part of the Protection Application the Applicant has also requested an interim Supervision Order. The specific relief that the Agency is seeking is set out on Page 2 of their Protection Application. The record indicates that the child's parents were formally served with the Protection Application and Notice of Hearing on January 13, 2004 at approximately 5:45 p.m.

[3] Section 39(1) of the **Children and Family Services Act** deals with notice on a Respondent of a **Children and Family Services Act** proceeding. In particular that section reads:

> As soon as practicable, but in any event no later than five working days after an application is made to determine whether a child is in need of protective services or a child has been taken into care, whichever is earlier, the agency shall bring the matter before the court for an interim hearing, on two days notice to the parties, but the notice may be waived by the parties or by the court.

[4] I made reference a few minutes ago to Civil Procedure Rule 3.01(c) which indicates:

> 31.01(c) where there is a reference to a number of days, not expressed to be clear days, between two events, in calculating the number of days there shall be excluded the day on which the first event happens and included the day on which the second event happens.

[5] Accordingly, or in light of the Civil Procedure Rules and the fact the legislation does not refer to clear days, I am satisfied that the Respondents have received two days' notice of this interim application as required by the **Children and Family Services Act**. If I am in error in this regard then I conclude that in the circumstances of this case, it is appropriate to waive the period of notice provided by the **Act.**

[6] That takes us to what I will call the main Application that is before me today, that is the interim hearing. L.F. appeared today without counsel. He was prepared to represent himself for the purpose of today's proceeding but has indicated that he wishes to retain counsel. C.V. did not appear today, apparently as she is caring for the infant in question. The matter was set down on my docket for fifteen minutes for what is commonly referred to as the Five-Day Hearing. The matter cannot be dealt with in full today and the parties have not reached agreement on what should be done. Accordingly, section 39(3) of the **Children and Family Services Act** applies and this section reads:

> Where the parties cannot agree upon, or the court is unable to complete an interim hearing respecting, interim orders pursuant to subsection (4), the court may adjourn the interim hearing and make such interim orders pursuant to subsection (4) as may be necessary pending completion of the hearing and subsection (7) does not apply to the making of an interim order pursuant to this subsection, but the court shall not adjourn the matter until it has determined whether there are reasonable and probable grounds to believe that the child is in need of protective services.

[7] I could make a finding that the interim hearing did not formally begin today, in which case it would be questionable whether it would be necessary for me to make a finding that there are reasonable and probable grounds to believe

that M.C.F. is in need of protective services. In these circumstances, however, and in light of the evidence filed, I find that it is appropriate to conclude that the hearing did actually commence today and accordingly a finding of reasonable and probable grounds must be made or the application must be dismissed. I also find that with the evidence presented, it would not be appropriate to adjourn the matter and commence the hearing on another day.

[8] The Applicant has filed an extensive affidavit in support of its application. I do not propose to review all of the contents of the affidavit here now but feel that it is necessary to quote from some portions of the affidavit in order to put my decision in context. I am reading from the affidavit of worker, Christine Coade, which was sworn to on the 13th day of January, 2004 and I am taking excerpts from the affidavit only. I begin by turning to page 2, paragraph 4 where it states towards the bottom of the paragraph:

> It was reported that an employee at the Grace Maternity Hospital recognized the last name of the Respondent, C.V. as being the name of an individual who was alleged to have kidnapped her triplet children and had subsequently faced kidnapping charges in Ontario.

[9] In paragraph 5 of the said affidavit there is reference to a Province/Canada Wide Child Protection Alert completed with respect to the Respondent, C.V. who is described therein as an expectant mother. The Alert issue date is December 19, 2003. And I am reading from the affidavit now. It says:

> The Alert states, AC.V. has recently had her access to her three children terminated. Concern existed for the emotional safety of the children due to

> her attempts to have the children aligned with her throughout a lengthy custody and access dispute. C.V. is being tried for the alleged abduction of her three children. L.F., her new husband, is on probation for abducting his daughter and taking her to Nova Scotia. He refused to participate in a psychological assessment while incarcerated and has been breached for failure to comply with a probation term that he attend counselling. C.V. and L.F. are confrontational and verbally aggressive. Mental Health requires an assessment. The recommendation of the [...] Children's Aid Society - [...], Ontario which issued the Canada wide Child Protection Alert was, A Risk assessment is required and court application should be considered. Recommendation - warrant to apprehend.

[10] In paragraph 7 of the said affidavit it is stated as follows:

> Information confirmed that the Respondent, L.F. had been accused and found guilty of the abduction of his daughter, C.H. in 1999. It was confirmed that he served time in a Federal Institution with respect to that crime and further that he remains on parole and is in the Province of Nova Scotia in violation of the terms of his parole.

[11] Paragraph 8 of the said affidavit, there is reference to a psychologist by the name of Dr. T. Glover and at the conclusion of the paragraph, quoting from a report of Dr. Glover, it is stated:

> Clearly, mental health issues are likely salient to this case.

[12] Paragraph 9 of the said affidavit, there is a reference to a criminal profile for the Respondent, L.F.. Quotes are taken from that criminal profile and the following is contained in the affidavit:

> L.F. has demonstrated an inability to live within society's accepted norms, refuses to accept legal decisions, perceives himself above or outside the law and is the wronged party. His attitude is negative, contains distortions, asocial perception of himself and events.

[13] In paragraph 12 of the said affidavit the following is stated:

> In a July, 2003 assessment of risk, the Agency concluded regarding the mental, emotional, and intellectual capacity to care for children, Both C.V. and L.F. are being rated as a nine (insufficient information to make a rating), given the recent developments within this family, again pertaining to custody and access issues. There is a concern that she is getting more

> desperate as the courts continue to rule against her, in her bid to get custody of the children...An added stress for Mom is that her acquittal on the abduction charge was overturned and she must face a new trial. Furthermore, L.F.'s refusal to attend for counselling as per his probation Order for kidnapping his daughter approximately three years ago has led him to being charged with breach of probation and a trial has been set for January 2004. The file discloses concern about the mother's emotional and mental health and indicated that she had sought counselling in the past and suffered from borderline depression and was pre-disposed to high levels of anxiety when stressed and was diagnosed with features of Post Partum Depression when her triplets were approximately seven months of age. In the update of October 15, 2003 the Risk Assessment states, C.V. has a number of significant stressors in her life at this point. And she is 8 months pregnant. Further assessment of her ability to care for her baby, once born, in a positive manner is required. She is at risk of PPD ...

Which I take it to be post partum depression

> ... given her history of such, as well as the stressors, which includes her interim no access order, ongoing legal issues, her upcoming retrial for abduction, L.F.'s trial for breach of probation, their charge of breach of restraining order, her worries about her children, etc. At this time the emotional harm as a result of custody and access issues continues, and counselling is required to address this.

[14] In paragraph 14 of Ms. Coade's affidavit reference is made to a relatively recent decision of Justice Campbell of the Ontario Supreme Court of Justice. In that decision which is dated October 31, 2003 - I should say that the deponent quotes from that decision in her affidavit as follows. I am sorry, this is not a quote from the decision; this is a quote from the worker's affidavit:

> The Honourable Justice Campbell states with respect to the Respondent, C.V. and the Respondent, L.F., at paragraph 18, She and L.F. have openly and persistently, by the recent escalation of their relentless program to undermine L.C.M.'s custody of the triplets, modelled an anti-social, antagonistic mind set for the children. They are clearly committed to a tactic of confrontation of any society institution as exemplified by their various ongoing lawsuits versus the police and the media. Their strategy is also easily identified by their aggressive postures, their outspoken, firmly held beliefs and their outrageous verbally assaultive behaviour in court and their letters, press releases, websites, publications and television interviews. No child of C.V.'s could ever withstand this team of such strong

> manipulative and forceful personalities. At paragraph 46, the Honourable Justice Campbell quoted the Honourable Justice Aston, who had made previous determinations with respect to contact between the Respondent, C.V. and the triplets in which Justice Aston stated, The mother's conduct, behaviour and statements since March 2000 have unfortunately confirmed the fears of the trial judge that certain of her personality traits, if not controlled, >have the potential of destroying the emotional well being of the children With respect to the Respondent, L.F., at Paragraph 17 the Honourable Justice Campbell referred to the sentencing decision rendered by Justice Roland J. Haines in relation to the Respondent, L.F. and commented that Justice Haines had Ain hind sight, a great ability to forecast the future. Justice Campbell quoted from Justice Haines, AL.F. can be an engaging, even charming person, but he is volatile and unpredictable. Unfortunately he appears to have passed way beyond the pale of someone who marches to a beat of a different drummer. He has, instead, taken on the mantle of the obsessed and seems to have forsaken reason.

[15] As L.F. quite properly points out, at this stage this evidence has not been tested by way of cross-examination nor have the Respondents been given an adequate opportunity to respond to these allegations. In addition, he is quite correct when he points out that the affidavit filed by Ms. Coade contains numerous incidents of hearsay. I note, however, that under section 39(11) of the **Children and Family Services Act** the Court may admit and act on evidence that the Court considers credible and trustworthy in the circumstances when dealing with an interim hearing.

[16] One must be careful not to focus only on the evidence which may not favour the Respondents. I note, for example, references that I am taking from exhibits attached to Ms. Coade's affidavit and in particular I am reading from the worker's notes which I believe are contained as Exhibit AA. I stand to be corrected on that. The first note under the date December 24, 2003 ...

[17] L.F.: What page are you at, sorry.

[18] The Court: That's alright. Unfortunately, these pages are not numbered. This is a constant problem we seem to have.

[19] L.F.: It's not a constant problem. It's incompetence.

[20] The Court: It is Exhibit AA and I will let Ms. Whelton find it for you. The date is [in 2003] at 11:45 a.m:

> Telephone call from Dr. Dawn Edgar, Re Patient C.F. (V.) 40 weeks pregnant. Arrived in [...] from [...] Ont. with husband L.F.. Patient requested home birth. Dr. refused. Baby delivered at Grace last night - Mom expected to be discharged today - will be going to mother in law's home at [...] Street [xx-xxxx]. No concerns expressed Re: Baby/interaction. Mother seems very stable and extremely loving toward baby.

[21] I will next refer to what is numbered page 4 in the worker's notes. The page I just read from was page 1 in the worker's notes. It is a record under the date [...] 2003. It is the bottom of the page, the bottom paragraph of the page. Have you found it, L.F.?

[22] L.F.: Yes.

[23] The Court: Okay. It says:

> Met with Intake Supervisor and reviewed all referral information in accordance with Standard 3.2. The child has been born. The Doctor and Hospital report all seemed well between mother and baby. There were no child protection concerns to report. Review of past history is very relevant in determining DP 1. This case will be investigated as per section 22(2) (B) (G) of CFSA.

[24] L.F.: What is DP 1, excuse me?

[25] The Court: I cannot interpret that for you, L.F., you will have to ask the worker eventually what that means.

[26] On the next page, page 5 of the worker's notes and under the date December 30, 2003 it says:

> Priority 4 assigned to this file. There is past involvement with CAS in other province, however the information of referrals made in reference to neglect, supervision were either not investigated or terminated at Intake. There is no evidence to suggest that this newborn baby is at risk of physical harm due to past history of abuse of children.

[27] We turn to the next page at the top paragraph there is a paragraph which reads:

> Telephone voice message from Dr. Edgar as follow up to her call this this [sic] Agency on December 24/03. Dr Edgar stated that she has no concerns re baby. Stated that she has seen the baby with the parents a couple times and describes the parents as very caring, loving and appropriate toward the baby.

[28] Turning to what is marked page 8 of the worker's notes, under the date January 8, 2004, bottom paragraph, there is a paragraph that reads:

> 9:30 a.m. This worker met with Intake Supervisor Lynn Jones to discuss conversation with C.V. and L.F. yesterday. Worker expressed concern that Agency involvement with this family is unlikely to be voluntary or cooperative, such based on this worker's conversation with the couple and a review of the Ontario file information Re Ontario's experiences. Discussed the need for a legal consult Re court application. Discussed that with respect to eminent risk there is no current evidence to suggest such. It was determined that Lynn Jones would review the file information and a consult with legal would occur on this date.

[29] Then if you go over to the next page under the date January 8, 2004 the following is contained:

> Telephone contact with Dr. Edgar. Dr. Edgar informed that she saw the baby in hospital [in 2003] at birth, on December 24/03 at discharge and in her office on December 31/03 and January 6/04. Dr. Edgar stated that she is scheduled to see the baby in her office tomorrow. Stated that she has observed the parents with the baby and described them as loving, caring and concerned about their baby. Stated that the baby is a little slow to gain weight but that she is not really concerned about such and is following the baby closely. Stated that the mother is breast feeding and self reports that

> she has plenty of milk and the baby is nursing all the time. Worker inquired Re parents' presentation. Dr. Edgar stated that they have not presented with any mental health concerns.

[30] It is unclear from the materials that have been provided whether Dr. Edgar is aware of the history of the Respondents in this action.

[31] I would also refer to other notes contained in the file of the worker, attached as an Exhibit to the worker's affidavit and in particular on page 3 of the worker's notes, four paragraphs down under the date December 30, 2003.

[32] L.F.: Where's this?

[33] The Court: You see how the worker's notes are page numbered, L.F.. Go back to page 3 then of the worker's notes.

[34] L.F.: Oh, okay, you're back-tracking.

[35] The Court: Yes. You see the date, [...] 2003?

[36] L.F.: Yeah, yeah.

[37] The Court: Okay, four paragraphs down it states:

> C.V. supports L.F. in his failure to comply with the Court Order stating that the Probation Order and teh [sic] conviction upon which it is based are illegal. C.V. is awaiting a re trial for the alleged abduction of her three children from their custodial father. C.V. is alleged to have taken the children across the Borders to Mexico in the trunk of her car in violation of a Court Order.

[38] I then refer to page 4 of the worker's notes under the date December 30, 2003, a couple of paragraphs down, it says:

> There are 2 separate files in their Agency -
>
> This is the Ontario Agency ...
>
> One that deals with the custody access issues of C.V. and her triplets and one that deals with L.F. and the abduction of his daughter. The concerns in

> relation to this couple continue to be the stability of their mental health. They both present as quite volatile and worker safety is an issue that needs to be considered. The custody access issue has been ongoing for the past 10 years. The kidnapping of her children was 3 years ago, when they were 7. After being tried, she was acquitted based on her defence that she was acting on the safety of her children who were being emotionally abused by their father. She was given access again. This acquittal has since been overturned and she is to be retried.
>
> Their Agency established that there was emotional harm to the children due to the ongoing bitter custody dispute.
>
> L.F. has been charged, convicted and has served time for the abduction of his daughter. He is on probation, but both feel it was illegal, so they will not follow the Order. They have not followed any of the Court Orders over the years.
>
> If C.V. had given birth in Ontario, their Agency would have requested a warrant to apprehend the baby and order psych testing for both parents.

[39] I then make reference to the decision of the Honourable Justice Campbell from the Ontario Supreme Court of Justice in the case of **L.C.M. v. C.A.V.** I note in particular the fact that this decision was given in only October of 2003. It was released on October 31, 2003 and the decision speaks for itself but does raise a variety of issues which are obviously relevant to the child welfare concerns in this proceeding.

[40] I have to state that the Court has been placed in a very unusual position in this case. The Agency has requested a Supervision Order against the factual background that I have just indicated on the record. I must determine on a temporary basis only whether such an Order is appropriate, whether a Supervision Order is appropriate. I am going to read again from the Canada Wide Alert which was issued by the [...] Children's Aid Society of [...], Ontario on December 19, 2003 which is less than one month ago. I am reading from the middle of the Alert, it is Exhibit AB, L.F., to the worker's affidavit.

[41] L.F.: Yeah, I have it.

[42] The Court: Okay:

> Reason for Alert & Cause for Concern: C.V. has recently had her access to her three children terminated. Concern existed for the emotional safety of the children due to her attempts to have the children align with her throughout a lengthy custody and access dispute. C.V. is being tried for the alleged abduction of her three children. L.F., her new husband, is on probation for abducting his daughter and taking her to Nova Scotia. He refused to participate in a psychological assessment while incarcerated and has been breached for failure to comply with a probation term that he attend counselling. C.V. and L.F. are confrontational and verbally aggressive. Mental health requires assessment.

Then in the next section, entitled Recommended Action it states:

> Alert area hospitals. Notify [...] CAS to obtain additional information if family's whereabouts is determined. Risk assessment is required and court application should be considered. Recommendation - warrant to apprehend.

[43] Against this background, the background being the Canada Wide Alert, the Court is also presented with a history of alleged child abductions. L.F. has indicated to the Court that at the present time he is not prepared to consent to a Supervision Order being issued, nor is he prepared to consent to the non-removal clause requested by the Agency, nor is he prepared to allow the Children's Aid Society of Halifax into his home to determine whether M.C.F. is being properly cared for. Against this background I am advised and given evidence, quite frankly, that in the past both of the Respondents have failed to follow Court Orders. I want to turn back for a moment to the legislation and what I am able to do in this situation. I am reading from section 39(3) of the **Children and Family Services Act** which states:

> Where the parties cannot agree upon, or the court is unable to complete an interim hearing respecting, interim orders pursuant to subsection (4), the court may adjourn the interim hearing and make such interim orders pursuant to subsection (4) as may be necessary pending completion of the hearing and subsection (7) does not apply ...

I read that because I have concluded that despite the fact that the Agency has requested a Supervision Order and L.F. has requested a dismissal of the action, I am satisfied that I have the discretion to issue any interim order which could have been issued under subsection (4).

[44] I am now going to turn to section 2 of the **Children and Family Services Act** which refers to the purpose of the **Act** and the paramount consideration of the Court when dealing with any proceeding under the **Act.** Section 2(1) of the **Act** states:

> The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.
>
> Section 2(2) reads:
>
> In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child.

[45] I have determined that on an interim basis only, until the Respondents have had an opportunity to retain counsel and formally respond to the Application, that it is in the best interests of the child, M.C.F., that she be placed in the temporary care and custody of the Children's Aid Society of Halifax. I base my decision on all of the evidence filed but make particular reference to the uncertainty concerning the Respondents' mental health, the extremely young

age of this child, the allegations of previous child abductions by the Respondents and L.F.'s suggestion during the proceeding that if a Supervision Order is issued the Respondents will have to find another place to live. I acknowledge that there is no evidence of physical harm having come to M.C.F. to date but the concerns surrounding the Respondents' mental states satisfies me that there are reasonable and probable grounds to find that M.C.F. is in need of protective services and that a temporary Care and Custody Order should issue and is appropriate in the circumstances. Along with that Order, I am going to direct that both of the Respondents be entitled to supervised access with M.C.F. as ...

[46] L.F.: Can I ask you who is going to breast feed this child?

[47] The Court: I am going to deal with that in just a moment, L.F.. Supervised access as determined by the Agency. If L.F. or C.V. have any issues in that regard, if they feel they are not getting enough supervised access they will be able to bring the matter back before the Court.

[48] I want to note that I have taken into account the fact that C.V. is presently breast feeding M.C.F.. The Order shall indicate that C.V. shall be permitted to provide the Agency with her breast milk for M.C.F. and if she elects to do that, the Children's Aid Society of Halifax shall have an obligation to ensure that the child is fed the mother's breast milk.

[49] I want to make it clear that this is an interim Order only. Once I have heard the Respondents' evidence and cross-examination has been conducted, I

may well conclude that it is appropriate to return M.C.F. to the Respondents' care. I realize that it is unusual for the Court to award relief that has not been requested, however, I am satisfied that the relief requested by the Agency in these exceptional circumstances did not accord with the best interests of the child and that the Order I have granted is indeed the appropriate Order.

[50] L.F.: I'm not ... (inaudible)...

[51] The Court: I would ask that the Agency forthwith go and apprehend the child and I will note for the record that L.F. has now exited the courtroom. I did want to deal with the filing of documents for the continuation of the interim hearing. I am adjourning this, I think it is clear from my decision that I am adjourning the interim hearing and it must be completed within thirty days. Ms. Whelton, in light of L.F.'s departure, how do you propose we send word to him or deal with the issue of when his documents should be filed?

[52] Ms. Whelton: What I'm wondering is if I could just have a two or three minute adjournment so I can deal with the trying to ensure that the baby is there for the apprehension and then come back in. We can set down dates and I can try to get those served on L.F..

[53] The Court: Okay, we will adjourn. You can let me know when you are able to proceed. **Recess**

[54] **Resumes**. Thank you, this is the continuation of the matter of the Children's Aid Society of Halifax v. C.V. and L.F.. Ms. Whelton, on behalf of

the Agency. I will note for the record that L.F. has now left and C.V. has not appeared today.

[55] Ms. Whelton: Thank you, My Lady. When we requested the adjournment your Ladyship was referring to ... I guess this will complete the commencement of the interim hearing and adjourning the completion of the interim hearing. Your Ladyship wished to deal with the filing of documents. I guess there are a couple of questions in terms of the completion within thirty days. The thirty-day date is February 12, 2004 - the Protection Application having been dated the 13th day of January, 2004. Certainly, we had scheduled to come in on a fifteen-minute Court appearance today and we're here about four hours later. Just having completed the matter I'm not certain how much more quickly we're going to have an interim hearing. I really don't know and I'm wondering whether we want to set down something within two weeks or so and then if we need something over that date to address it at that point?

[56] The Court: Do you mean for the completion of the hearing or for the organizational pre-trial?

[57] Ms. Whelton: I guess organized as to what is going to happen at the hearing. I'm reticent to try to ask the Court to clear dockets for periods of time in terms of an interim hearing, to complete an interim hearing. Clearly when L.F. was here he indicated that there were numerous records that he wanted and obviously we're not going to be able to get those within the thirty days and Your Ladyship has not as yet dealt with any of the Orders for Production and

that sort of thing. So it may well be that we need to come back really for a short period of time and I don't know how best to achieve to address those organizational needs

[58] The Court: I would like to see everybody back on Monday. I have a question in my mind as to whether you are going to be able to serve L.F. and C.V. within that period of time but I think nevertheless we should make the attempt. I would like you to set something down on my docket for Monday or Tuesday for a half hour if you can find it. I think you will find it Tuesday afternoon. Please give personal service to C.V. and L.F. A.S.A.P. and we'll see if they appear, and if they appear we will talk about how much time is required. If they do not appear we'll talk about setting a short period, like a half hour for the completion of the interim hearing, very shortly thereafter, giving them notice of that also. If they appear for that we will have to then clear the decks to continue on with the hearing rather than take off -- I suspect that this is going to be an interim hearing which is going to be a number of days long if indeed it goes ahead. So let us come back on Monday or Tuesday and see where we are. Do you have any knowledge as to whether or not the apprehension of the child has taken place?

[59] Ms. Whelton: I don't know. The police were going to be attending. Ms. Coade had arranged previously with a worker as soon as she got the phone call to leave and meet her at [...] Street so when I leave the Court I'm going to try and make the inquiries to whether or not that has actually occurred, to see

whether that has happened. I guess one of the things I need to do immediately upon getting back to the office is to prepare the interim Order so that we do have that Order because obviously the workers are not going to be serving section 33 documents - they are going on the basis of the Court Order. I just want to confirm in terms of the Court Order that the determination of reasonable and probable grounds has been made on today's date?

[60] The Court: That is right. Did I not say that in my decision?

[61] Ms.Whelton: Yes, I just wanted to be sure that we weren't talking about just 39(3); that we were talking about the reasonable and probable grounds had been made and that also there is an adjournment over to complete the interim hearing with respect to the other issues.

[62] The Court: That's right. Step back, Ms. Whelton, you said not just 39(3)?

[63] Ms. Whelton: There is a reasonable and probable grounds and I guess that sometimes it depends upon the Justice that we're before as to how that is interpreted. That there is one view that basically says reasonable and probable grounds is made at the interim hearing and is not re-visited at the completion of the interim hearing.

[64] The Court: I intend to re-visit it but for today's ...

[65] Ms. Whelton: So it's just for the purposes of 39(3) the finding has been made?

[66] The Court: Yes, that's right. I would not make a final determination until the Respondents have had an opportunity to cross-examine and file their own materials but for the purposes of the adjournment I have made the finding.

[67] Ms. Whelton: Okay, I just wanted to be sure because I didn't want to get the form of Order back. The other is that Your Ladyship has determined that the period of service did not need to be waived but indicated that in the event it was required that it was waived and I'm wondering if Your Ladyship would object to a provision that says, it is ordered that in the event it is required that the period of service be waived, and do it that way so it's covered off in the form of the Order.

[68] The Court: That is right; that is fine.

[69] Ms. Whelton: And then I think the rest of it is pretty forthright in terms of the terms with the adjournment date.

[70] The Court: Do not forget the breast milk.

[71] Ms. Whelton: What I indicated in that was, it is further ordered that in the event that the Respondent wished to provide breast milk for the child, that she may provide same to the Applicant Agency and the Agency, insofar as it is possible, will assure that the child receives the breast milk.

[72] The Court: How could it not be possible?

[73] Ms. Whelton: Um, if it arrived in and is not delivered to the foster placement.

[74] The Court: But that is what I want to make sure, that the Agency delivers it to the foster placement.

[75] Ms. Whelton: I guess I just want to be sure that it is very likely that the breast milk will be supplemented as opposed to only breast milk.

[76] The Court: And I did not mean to suggest that if there was not enough breast milk this child should go without formula. I am just saying if the mom wishes to provide breast milk and if she provides enough to feed the baby all the time, then that baby shall be fed that breast milk. Okay. Maybe what you could do, Ms. Whelton, is fax a copy of the Order to the attention of my assistant and, Ms. Barreto**,** I would ask you to bring it to me. Do not put it on my regular pile but just bring it to me so I can have a quick look at it. Is Monday too late? If you come back on Monday or Tuesday, is that too late or do you need the Order today?

[77] Ms. Whelton: I was kind of hoping we could have the Order issued today.

[78] The Court: Okay, so why don't you go to your office. We are obviously not going to have an opportunity to show it to L.F. because he has left the courtroom but in the circumstances I am prepared to issue it as long as it follows the form of what I indicated, so if you fax it to Ms. Barreto. today I will look at it and hopefully we can have it issued this afternoon.

[79] Ms. Whelton: The fax copy can be issued as the original and ... if that's acceptable.

[80] The Court: In these circumstances I am satisfied with that, yeah. So I will leave it to you, Ms. Whelton, to go out and ...

[81] Ms. Whelton: I'll set down a time, hopefully on the Tuesday afternoon and then we'll attempt to serve both of them. Obviously I don't know if we're going to be successful but we'll certainly make the attempt.

[82] The Court: That is fine. Thank you very much. We are adjourned.

Deborah K. Smith, J.