IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: CAS of Halifax v. T.A. & C.S., 2004 NSSF 21

Date: 20040304
Docket: S.F.H. No. C-024686
Registry: Halifax

Between:

Children's Aid Society of Halifax

Applicant

v.

T.A. & C.S.

Respondents

Revised Decision: The text of the original decision has been revised to remove personal identifying information of the parties on September 26, 2008.

Restriction on publication: Publishers of this case please take note that s. 94(1) of the ***Children and Family Services Act***, S.N.S. 1990, chapter 5 applies and may require editing of this judgment or its heading before publication. Section 94(1) provides:

> "**94(1)** no person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this **act**, or a parent or guardian, a foster parent or a relative of the child."

Judge: The Associate Chief Justice Robert F. Ferguson

Heard: February 18 & March 2, 2004, in Halifax, Nova Scotia

Written Decision: March 30, 2004

Counsel: Pamela J. MacKeigan, for the Applicant
Tanya Jones, for the Respondent, T.A.
Susan Young, for the Respondent, C.S.

By the Court:

[1]B.L.A. was born [in 2003]. His parents are T.A. and C.S.. B.L.A. was taken into care by the Children's Aid Society of Halifax at birth. The Agency is requesting B.L.A. be placed in their permanent care and custody with a view to adoption. The parents oppose this application. The Agency's Plan of Care dated September 15, 2003, states in part:

> "The sibling of this child was placed in the permanent care and custody of this agency in December, 2002. Due to the continuing issues of the parents' intellectual limitations and inadequate parenting skills and lifestyle issues the agency feels the parents of B.L.A. would be unable to provide even marginal care for this child.
>
> B.L.A.'s foster parents are prepared to adopt both this child and his older sibling, C.A.. C.A. is also a ward of this agency.
>
> Access to both B.L.A.'s parents be terminated to facilitate the adoption placement."

HISTORY

[2]May 2, 2003: The child, B.L.A., was taken into care and custody of the Children's Aid Society of Halifax pursuant to s. 33 of the *Children and Family Services Act*. A Protection Application and Notice of Hearing issued alleging the child to be in need of protective services pursuant to s. 22(2)(b), (f), (j), (ja) and (k) of the *Children and Family Services Act*.

[3]May 9, 2003: The five-day interim hearing was held. T.A. and C.S. were present, consented to a finding of reasonable and probable grounds and an interim order of temporary care and custody. T.A. and C.S. indicated they would be obtaining counsel for the completion of the interim hearing and the matter was adjourned until June 2, 2003.

[4]June 2, 2003: This matter was before the court for the completion of the interim hearing. T.A. and C.S. were present and were again unrepresented. The Respondents indicated they would attend Legal Aid immediately to apply for counsel. The Respondents were informed they would have supervised access with

their child. It was agreed an early protection pre-trial would be set to allow the Respondents a further opportunity to obtain counsel.

[5]June 18, 2003: The matter came forward on a pre-trial prior to the protection hearing. T.A. and C.S. appeared without counsel and stated they attended at Legal Aid to complete their forms but had not heard further. The Respondents were exercising access with their child once weekly. The matter was further adjourned to allow the Respondents an opportunity to appear with counsel.

[6]July 15, 2003: The matter came forward for the protection hearing. The Respondents appeared without counsel and the matter was further adjourned for a protection hearing on July 28, 2003, given the outside date for the protection hearing was July 31, 2003.

[7]July 28, 2003: The protection hearing was held. T.A. appeared with counsel. C.S. appeared with counsel. T.A.'s counsel advised her client would consent to the protection finding. C.S.'s counsel stated that she had not received instructions to consent but would be offering no evidence. The agency's application, pursuant to s. 96(1), to admit in evidence in this proceeding all the evidence of the prior proceedings wherein the child, C.A., was found to be in need of protective services and was placed in permanent care was granted.

[8]October 24, 2003: The disposition hearing was held. An order of temporary care and custody was issued with permanent care and custody dates being scheduled for the 18th and 19th of February, 2004. C.S. was scheduled to participate in a psychological assessment with Mr. David Cox on November 14, 2003. It was agreed the matter would be set over for a review of disposition and an organizational pre-trial in advance of the permanent care and custody hearing.

[9]December 22, 2003: An organizational pre-trial was held. C.S. had attended for his assessment with Mr. Cox on November 14, 2003, but the report was not available. It was anticipated the report would be available early in the new year. It was agreed the matter would be set over for a further review and pre-trial once Mr. Cox's report was received by the parties. A further pre-trial was held on January 27, 2004, and counsel for C.S. informed the court she believed he was able to instruct counsel.

[10]The Respondents are parents of another child, C.A., who was born [in 2001], taken into care by the agency on January 10, 2002, and placed in the permanent care by order dated [2002]. As previously noted, by virtue of s. 96 of the Act, the evidence of that proceeding was admitted as evidence in this application. On that occasion, when dealing with C.A., the agency became involved with T.A. as a result of a call from her mother [in 2001]. It was reported T.A. was five months pregnant and concern was expressed as to the unborn child and T.A.. It was reported that, in addition to mental health problems, T.A. was in a abusive relationship, involved with people who used drugs and who were involved in criminal activity. It was further reported T.A. had limited abilities and her mother questioned her ability to care for herself let alone an infant child.

[11]As the agency involvement continued, basically they assumed legal responsibility for providing for this child. The main but not only concern was T.A.'s and C.S.'s limited ability to provide parental care. This concern included the parents' lack of foresight as to their limited capabilities, unwillingness to accept or acknowledge the need for help or to be accepting of it and, as well, there were concerns as to the parents' transient and uncertain lifestyle.

[12]C.A. was taken into care when he was approximately seven weeks old. The agency sought permanent care. The parents abandoned their initial pursuit of having C.A. returned to their care. As a result, the agency was not required in securing an order of permanent care to provide evidence other than that the parents were not offering any plan for C.A.. Actually, the parents consented to the order.

[13]The information on which the agency based their conclusion C.A. be made a permanent ward is, in their opinion, relevant to a similar request in the case of B.L.A. and they put it forward at this time as well as information that became available after December of 2002.

[14]The agency asks it be noted that T.A. was four and a half months pregnant with B.L.A. when C.A. was made a ward in [...] and that it was three months later they received a call of concern from T.A.'s doctor pending the birth of the child.

[15]The current order is one of temporary care and custody relating to a decision made by this court on December 22, 2002, and states, in part, as follows:

> "1. The child, **B.L.A., born [in 2003]**, shall be placed in the temporary care and custody of the Applicant, the Children's Aid Society of [...], pursuant to **Section 42(1)(d)** of the **Children and Family Services Act**.
>
> 2. The terms and conditions of this Order of Temporary Care and Custody shall be as follows:
>
> (a) The Respondents, T.A. and C.S., shall have supervised access with the child as maybe authorized and arranged by the Applicant, the Children's Aid Society of Haliafx, with all costs associated with this service to form a part of the costs of taking a child into care. Reports shall be filed by the Access Facilitator.
>
> (b) Such other services as may be arranged upon or authorized by the Applicant, the Children's Aid Society of Halifax, with all costs associated with such services to form a part of the costs of taking a child into care."

[16]The following testified:

- Kathy Tate who was an access facilitator employed by the agency;
- Beatrice Amirault, a contract worker employed by the agency;
- David Cox, a psychologist;
- Ronald Hennessey, a social worker employed by the agency and the gentleman who had carriage of this matter;
- T.A., the mother;
- C.S., the father.

[17]Kathy Tate: Kathy Tate facilitated the access between B.L.A. and his parents between June, 2003, and January, 2004. She described an incident where T.A. left the infant unattended and, given his age, in her opinion, at risk. She describes the parents during the visits as uncommunicative. She found T.A. to be often uncertain as to how to care for B.L.A. and, on those occasions, to pass the child physically to C.S.. The parents were affectionate with B.L.A., especially when beginning and ending the visits. Ms. Tate had no reason of concern that either parent would deliberately harm their child. She did mention her concern as to their providing appropriately for their child's needs. Her evidence does not lead

to a conclusion that B.L.A. should be permanently removed from his parents' care. In fact, it does little to support a view that such a conclusion should be reached.

[18]Beatrice Amirault: Beatrice Amirault was retained by the agency on a contract basis to provide support in the form of weekly in-home parenting for T.A. initially and later for C.S.. Her involvement in this capacity was from early July to November of 2002. She was provided with two contracts over this period. The second contract apparently indicates that her support should be enlarged to both mother and father. From Ms. Amirault's perspective, her involvement with B.L.A.'s parents could not be termed a successful venture. Initially, she portrays T.A. as someone who was unable to identify any areas in which she, as a parent, required assistance. Further, when Ms. Amirault engaged her in specific tasks she was either unwilling or unable to take meaningful part in such sessions or, alternatively, indicated they were unnecessary. The evidence of Ms. Amirault does not of itself lead to a conclusion that B.L.A. should be permanently removed from his parents' care, however, it could be somewhat supportive of such a conclusion.

[19]Ronald Hennessey: Ronald Hennessey is the worker who has carriage of this application. His evidence relates to the ultimate decisions made initially in taking B.L.A. into care and, latterly, the request for permanent wardship. He does relay some of the information suggesting that the Respondent mother did not completely embrace the outside community services made available to her. He further relayed information from the foster parents who are caring for both C.A. and B.L.A. that C.A. is developmentally delayed and there is a suspicion that B.L.A. will be similarly diagnosed. This information coming forward in this fashion cannot be accepted as proof of either child's mental condition.

[20]David Cox: David Cox is a psychologist and testified as an expert witness. Mr. Cox's psychological assessment of both parents refers to their significant cognitive limitations. He admits borderline intellectual functioning in and of itself does not automatically call for a conclusion one could not provide appropriate child care. He speaks of their borderline intellectual functioning and other aggravating factors in their case. With regard to C.S.'s assessment, he states:

> "C.S. was cooperative and forthcoming when he was seen for this Assessment. He had a very limited and simplistic understanding of current and previous Agency involvement, and what the Agency's concerns were. . . .

C.S.'s cognitive limitations were evidence to the Assessment. In conversation and during testing, it was a slow ad difficult process for him to absorb and comprehend information, and to formulate a response.

Results from the Wechsler Adult Intelligence Scale (WAIS-III) estimated C.S.'s level of verbal, nonverbal, and overall intellectual functioning to be at the Borderline or 'slow learner' level. The pattern of findings confirmed the clinical impression that he is able to register and recall information, but has a significantly limited ability to engage in further reasoning and problem solving with that information. Consistent with his limited understanding of Agency involvement and Child Protection issues, it was especially difficult for C.S. to think in explanatory, cause-effect terms. He is also likely to have particular difficulty in unfamiliar or fast-moving situations, which would have major implications for his ability to parent a child. C.S.'s verbal comprehension skills are especially limited, with test performance equivalent to the early Elementary School level. He has very limited literacy skills, estimated to be at approximately the Grade Four level. It is difficult for C.S. both to identify words in the first place, and to understand or think about what he is reading.

C.S.'s deficits in comprehension and information processing made it impossible to validly administer the Child Abuse Potential Inventory, which normally requires a minimum Grade Three reading level, even when it was administered orally.

C.S. is sincere and well meaning, but has significant cognitive limitations and other related difficulties which would compromise his ability to parent a child. Although a finding of Borderline Intellectual Functioning does not in itself signify insufficient parenting capacity, there are a number of aggravating factors in his case. First, his obtained scores on standardized measures of intellectual functioning do not fully reflect the extent to which his cognitive limitations impair his day-to-day functioning. Second, both C.S. and T.A. have significant cognitive deficits, and neither can be expected to reliably compensate for the other's limitations. There similarly appears to be very little in the way of extended family and social supports which could compensate for his and T.A.'s cognitive limitations so they could reliably meet a child's needs. Third, C.S. and T.A.'s cognitive limitations are associated with other serious issues and Child Protection concerns, including a history of instability in their relationship and lifestyle, their pattern of repeated separations, and observed deficiencies in the quality of their interaction with B.L.A.."

[21]In T.A.'s assessment, he states:

“Results of this Assessment produced consistent indications of cognitive limitation which are relevant to identified Child Protection concerns. T.A.’s current level of verbal intellectual functioning was estimated to be in the Borderline (slow learner) range, and her nonverbal and overall intellectual functioning in the Extremely Low range. There was evidence of a generalized deficiency in her ability to understand situations, and the cause-effect relationships between events. This deficiency appears to be reflected in her illogical explanations for decisions she has made, and her minimal understanding of what changes she would need to make in order to regain custody of C.A.. Although T.A. can absorb and retain factual information and concepts she hears or reads, she has a very limited ability to use that information in higher-level reasoning and problem solving.

T.A.’s nonverbal cognitive abilities are significantly impaired, and compound her difficulty in making sense of events and relationships. These deficiencies in nonverbal cognitive functioning would be likely to interfere with T.A.'s ability to solve practical problems, learn and carry out child care skills, and make appropriate decisions as a parent.

T.A.’s basic reading skills are surprisingly strong in view of her cognitive limitations, and were estimated to be at approximately the early Junior High School level. It is important to keep in mind, however, that T.A.'s strengths in the mechanics of reading could result in an overestimation of her ability to fully understand and apply what she reads.

Although results from self-report personality and clinical measures should be interpreted with some caution, they were highly consistent with other case information indicating that T.A. is characteristically naive, conforming, and submissive. There may be some tendency toward attention-seeking behavior. Findings which were strongly suggestive of paranoid thinking appear less consistent with other case information, but could be a reflection of T.A.’s limited ability to make sense of events and relationships.

T.A. is pleasant and well intentioned. However, the case history and results from this Assessment provide consistent indications of cognitive and other limitations which could compromise her ability to care for C.A.. These limitations are likely to cause increasing problems as he progresses through early childhood, and parenting becomes more complex and fast moving. Training in parenting skills is likely to be limited benefit, because of T.A.’s expected difficulty in both learning parenting skills in the first place, and have sufficient practical judgment and problem-solving ability to apply them independently. Although these problems could be moderated to some degree by stable circumstances and an effective

> support system, they are compounded in T.A.'s case by risk factors including a history of transient living arrangements, the absence of reliable extended family support, and a reportedly unstable relationship with a partner who is likely to have his own limitations. Child Protection monitoring and intervention are indicated."

[22]When questioned as to the possibility as to a parenting team, i.e. that this couple could complement one another, he stated quite the opposite, noting they would, as a unit, if anything, be further compromised in their parenting abilities. Mr. Cox further stated that their individual cognitive limitations are not of a sort that time or intervention could improve.

[23]T.A. and C.S.: The evidence of T.A. and C.S. is similar. Both testified that they never had an opportunity to parent a child with both C.A. and B.L.A. being taken from them so early in their lives; that, accordingly, there is no demonstrative evidence as to their inferior parenting from which one could conclude that they are unable to parent. They acknowledge some disruption and bad decision making earlier in their lives, both individually and as a couple but, as of late, they submit they have settled into an acceptable and safe lifestyle. Further, they suggest it was as a result of previous bad decision making and T.A.'s pregnancy with B.L.A. that led to the decision to allow C.A. to be made a permanent ward and concentrate on providing a home for B.L.A.; that they have never been given a chance to parent one of their children and that they deserve one.

[24]All decisions emanating from the *Children and Family Services Act*, particularly ones made at a disposition stage, require a consideration of the whole of the evidence and the applicability of the provisions of this *Act*.

[25]Without restricting the foregoing, I have considered, in addition to the preamble, the following sections of the *Act*:

> "**Purpose**
>
> 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.
>
> **Paramount consideration**

(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.

Best interests of child

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 childs development of a positive relationship with a parent or guardian and a secure place as a member of a family;

(b) the childs relationships with relatives;

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

(d) the bonding that exists between the child and the childs parent or guardian;

(e) the childs physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;

(f) the childs physical, mental and emotional level of development;

(g) the childs 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 childs 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 childs 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.

Disposition order

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.

Restriction on removal of child

(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.

Placement considerations

(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 childs community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person.

Limitation on clause (1)(f)

(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 42."

[26]The burden of proof in this proceeding is on the Applicant, i.e. the agency. It is a civil burden of proof but also a proof that must be regarded for the seriousness of the consequences of the required decision [*Children's Aid Society of Halifax v. Lake*, (1981) 45 N.S.R. (2d), 361 (N.S.C.A.) And *J.L. v. Children's Aid Society of Halifax*, (1985) 44 R.F.L. (2d) 437 (N.S.C.A.)]. It is accepted it would be difficult to render a more serious decision than one in which a child may be separated, temporarily or permanently, from a parent.

[27]Section 42(1), as earlier indicated, provides this court with six alternatives ranging from a dismissal of the application and the return of the child to the parent to a placement of the child in permanent care in control of the agency with no provision for access to the parent.

[28]It would be improper, at this time, to resort to the previous conclusions and findings in relation to the current order or previous orders in this proceeding or previous proceedings regarding these Respondents. The court is required to make a finding based on the evidence presented at this hearing.

[29]Both T.A. and C.S. oppose the agency's request for permanent care. They request the current order - the disposition order for temporary care - continue. They note the legislation allows an order in this matter to continue until October of this year. In the intervening time, they requested an opportunity to see B.L.A. more often and under less restrictive conditions than are currently the case providing them with an option to demonstrate their ability to care for their child. Such time would further allow them to participate in support services that could bolster their parenting capabilities. They submit the facts relating to the time they were dealing with C.A.'s birth, apprehension and permanent care order do not apply to the extent subscribed by the agency to the current application pertaining to B.L.A.. They suggest the report of Mr. Cox should lead me to conclude - or at least a portion of Mr. Cox's report - that the services provided by the agency through Ms. Amirault were not appropriate given their established limitations. Further, they suggest, in B.L.A.'s case, they were given less than the normal access time for a child of that age. In effect, the parents allege the agency, when dealing with the current application, allowed any and all of the negative aspects of what transpired between them, the agency and C.A. to dictate the efforts and conclusion in this current matter. Conversely, the parents allege the agency did not take into account any of the positive changes the Respondents had made as a couple or as individuals or as perspective parents since C.A. was placed in permanent care. Specifically, their residing together in the one residence for a considerable time, their attendance for arranged access and their indication of acceptance of receiving support.

[30]The agency submits that what transpired between the parents and the agency during C.A.'s apprehension is relevant and should be applicable to the extent they suggest. The main reason for such a suggestion is that the events happened in such close proximity to this application that, while the parents were acting in a manner portrayed by the accepted evidence, T.A. was pregnant with B.L.A. and, in effect, on her way to facing this application; that, in effect, the agency's relationship with the parents has been basically ongoing since the apprehension of C.A.. It is, therefore, in their view, quite appropriate to relate to the parents in light of their dealings with them in that past application. For example, the agency feels justified in not providing support services when the parents, particularly the mother, a few months previously had basically abandoned such service and stated it was not

necessary. The agency feels justified in offering the somewhat limited access schedule given a few months before the parents had walked away without notice from a more intense access schedule with C.A. and did not attempt to see him for months.

[31]The agency submits, to make judgments as to the appropriateness of their actions in dealing with the Respondents as parents of B.L.A., one must consider the following undisputed facts which emanate from their interaction with the Respondents in the application pertaining to C.A.:

- In January, 2002, the agency apprehended the child, C.A., of the Respondents;
- In February, 2002, a parenting capacity assessment was ordered as well as access three times per week;
- In March, 2002, the parents were unable to be located;
- In April and May, 2002, hearings were held relating to C.A. in which the parents did not attend;
- In late June, 2002, T.A. appeared at a hearing and requested an opportunity to be heard to have the child returned to her care; this being about four months after she and the other parent had voluntarily relinquished access of three times a week with this child and had been unavailable for service and court-ordered assessments. The agency who were then proceeding to a permanent care hearing nevertheless altered their procedure to confer with the parents as to other options. The parents' response was to indicate initially there was no need for additional services and, by December, the Respondents had basically removed themselves from consideration as the parents and consented to a permanent care order.

[32]Regarding the current application, the agency received a call from T.A.'s family doctor [in 2003] - about two months before the birth of B.L.A. - reporting her concerns to the agency as to T.A.'s ability to parent. A few days later, T.A. also contacted the agency, specifically Mr. Hennessey, indicating she was to give birth around [...] and that she wished to discuss her keeping this child in her care. Two appointments were scheduled in March but not kept by T.A.. She mentioned she had separated from C.S.. As previously indicated, B.L.A. was apprehended at birth [in 2003].

[33]The first order made pursuant to this application dated May 9, 2003, which I have quoted earlier in this decision, ordered B.L.A. placed in the temporary care and control of the agency and provided supervised access for the parents and for such other services as may be arranged. The current order dated December 22, 2003, contains the identical wording. There was never an order, nor apparently a request, by the agency or the parents that the agency provide or that the parents accept services. Similarly, there was never an order for the parents to participate in any assessment or become involved in any program. It is noted C.S. participated in the psychological assessment that was basically put in place regarding the application pertaining to C.A..

[34]In their request for a continuation of the current order and a denial of the agency's request B.L.A. be placed in their permanent care, the parents stressed the following:

- Given their current living conditions and lifestyle, they should be considered as parents differently than when they were engaged with the agency in the previous application and consented to that child being made a ward;
- The governing legislation allows the court to continue the agency and parental involvement with B.L.A. until October, 2004, before being forced to conclude if it is or is not appropriate to permanently terminate a relationship between parent and child;
- The psychological assessment of the parents while not supportive of their request to parent B.L.A. does not in and of itself provide sufficient evidence to allow for a conclusion that B.L.A. be made a permanent ward;
- The services provided by Ms. Amirault in the previous application was inappropriate and its unsuccessful result should not stand as a conclusion the parents could not profit by appropriate intervention.

[35]Given the main reason for the agency's intervention and ultimate request for permanent wardship, it is surprising a parental capacity assessment was not sought by the agency. It should be noted, however, that the parents also did not request such an assessment. The parents would have the court characterize Ms. Amirault's parent education training more as an evaluation of their ability than as an attempt to enhance it. They stress the lack of stated goals of such involvement and Ms. Amirault's unfamiliarity with Mr. Cox's report which stressed the parents' limitations and specified how such educational training should take place. I

acknowledge these concerns of the Respondents. However, Ms. Amirault is a trained social worker who undertook to provide parental education training to people who she had been informed, prior to entering and engaging in such training, were intellectually delayed. She was met initially with very little interest and soon after with an outright statement that her services were no longer required.

[36]A more thorough knowledge of the psychological assessment by Ms. Amirault would have been beneficial, however, given the circumstances, I doubt it would have equated to a different result.

[37]The result of this intervention by Ms. Amirault does provide some explanation why, in this application, the agency did not re-offer such service and instead made the Respondents aware of other agencies in the community that could be of assistance to them in this regard.

[38]The Respondents' current living arrangement over the past number of months does reflect a marked and positive change in their lifestyle. It does not, however, present as positive a change from the perspective of concluding that they are capable of providing appropriate child care as they suggest. This is partly due to the credit of the parents; that their previous situation was not that deferential to begin with. Neither parent, for example, reflected a history of drug or alcohol abuse or of a major conflict with the law. They had been, individually and as a couple, transient and prone to intermittent relationships. Although their lifestyle and accommodation were a concern, it was not the reason C.A. or B.L.A. were taken into care.

[39]The parents are presenting as a couple. Their submission, current and future plans, call for B.L.A. to be returned to their care. Further, it is proposed that, in this situation, C.S. would be the primary care giver. C.S. was quite clear on this point when he gave evidence. T.A. would appear to be in agreement with this arrangement. Certainly the evidence of the access facilitator noted that T.A. constantly called on C.S. to assume control of B.L.A. during their access visits. Further, the psychological report refers to T.A. as being naive, conforming and submissive. Therefore, from the foregoing, I conclude that, if a child were placed in the care of these parents, given C.S.'s stated intention to be the primary care giver, such would be the case.

C.S. AS A PARENT

[40]I find, in spite of his steadying lifestyle, that a child in his care would be in need of protective services; that such protection could not be provided if he was the child's caregiver and would require the child residing and being under the care and supervision of someone other than C.S.. I further find this situation will prevail for the indefinite future, certainly beyond the time available in this application. I further find that the provision of services would not eradicate C.S.'s presenting child caring deficiencies.

[41]The reason for this conclusion is obviously the evidence presented at this application, including my observations of C.S.. The main reason for this finding is the acceptance of Mr. Cox's psychological assessment in which he finds C.S. to have borderline intellectual functioning which would significantly impact on his ability to parent. Further, his view how C.S.'s cognitive limitations would impair his day-to-day functioning. My observation of C.S. while testifying supported this opinion. Further, I accept Mr. Cox's opinion that these limitations cannot be decreased by time or intervention.

T.A. AS A PARENT

[42]Mr. Cox's assessment also describes T.A. as having borderline intellectual functioning and that this functioning significantly imparts on her ability to parent. He again, as in the case of C.S., submits that time and intervention would not lessen these limitations. It is true that in his assessment he suggests family support intervention continue. I note here he says, and I quote, "as both an effort to teach parenting skills, and as an opportunity for ongoing assessment of T.A.'s ability to make progress in this regard." He further notes if significant progress is not made in the relatively near future, permanent care should be considered.

[43]I am satisfied, viewing this assessment as a whole, together with all of the other evidence presented, that a child in T.A.'s care would be in need of protective services and that the protection could only be provided by an order of permanent care. Further, I conclude this situation would not change with time or the provision of services.

[44]Viewing the couple as a family unit does not change the conclusions I have just reached as to their individual capabilities of providing child care for B.L.A.. As previously noted, Mr. Cox's conclusion was that their parenting deficits would be enhanced, not decreased, if living as a couple and, accordingly, the child care concerns, if anything, would increase in such a relationship.

[45]I grant the request of the Applicant and order the child, B.L.A., placed in permanent care of the agency. Given their stated plans for adoption, there would be no order as to access with the parents.

[46]Decisions made under this legislation have to be reached from the perspective of the best interests of the children. Given this acknowledgement, it is nonetheless very difficult not to be aware of the interests of parents. This is especially true when, as in this instance, the primary reason for ordering the separation of a relationship between these parents and their child is not of the parents' making. These parents did nothing wrong. They did not harm their child. There is no evidence to support a concern they would intentionally harm their child. There is evidence to support a view they care very much for their child. In other words, from their perspective, they do not deserve this conclusion. If the guiding principle in these matters was the best interests of the parents, the result would, obviously, be different but that is not, nor should it be, the case. I am sorry that my conclusion as to B.L.A.'s best interests is in conflict with your best interests.

J.