

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Minister of Community Services) v. A.L.*, 2019 NSSC 236

Date: 2019-07-23

Docket: SFHCFSA-114193

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

A.L. and E.C.

Respondents

LIBRARY HEADING

Judge: The Honourable Justice R. Lester Jesudason

Heard: July 12 and 20, 2019

Oral Decision: July 23, 2019

Written Decision: July 31, 2019

Summary: Minister of Community Services sought to vary an interim order by asking that two children be placed in the Minister's temporary care and custody after they had initially been placed with the mother under a supervision order. Each parent requested the children be placed with him or her under a supervision order.

Minister's variation granted. The children currently could not be safely placed in either parent's care. It was in the children's best interests that they be placed in the Minister's temporary care and custody.

Key words: Best interests of the child, placement, domestic violence, substantial risk, health or safety.

Legislation: *Children and Family Services Act*, S.N.S. 1990, c. 5

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Counsel: Deanna Bru for the Minister of Community Services
Lola Gilmer for A.L.
E.C., self-represented

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.”

By the Court:

1.0 Overview

[1] The Minister of Community Services filed a Notice of Child Protection Application on April 29, 2019, seeking an order determining that the children, M (age 8) and K (age 7), are in need of protective services under the *Children and Family Services Act (CFSA)* on the basis that:

- There is a substantial risk that the children will suffer physical harm as described in ss. 22(2)(b) of the *CFSA*;
- There is a substantial risk that the children will suffer emotional abuse as described in ss. 22(2)(g) of the *CFSA*; and
- The children have been exposed to, or have been made aware of, violence as described in ss. 22(2)(i) of the *CFSA*.

[2] All parties agree that there are reasonable and probable grounds that the children are in need of protective services. They disagree on where the children should be placed.

[3] The Minister asks that the children remain in the Minister's temporary care and custody. Both parents request that the children be returned to her or his care under a supervision order.

[4] A contested placement hearing was conducted on an emergency basis on June 12 and 20, 2019. I concluded that the children should remain in the Minister's temporary care and custody. I gave an oral decision to this effect on July 23, 2019. These are my written reasons.

2.0 History of Proceeding

[5] In the Minister's application filed on April 29th, she sought an Order placing M and K in the care and custody of the Mother, subject to the supervision of the Minister. The Minister requested that the Father not reside with or have any contact with the children except through supervised access upon terms and conditions as may be arranged by the Minister. The major concern identified was

that the children were exposed to domestic violence perpetrated by the Father against the Mother.

[6] The interim hearing in this matter was commenced on May 3, 2019. Neither parent had counsel so I adjourned the completion of the interim hearing to May 28, 2019. Until then, I granted the interim order sought by the Minister which placed the children in the care of the Mother under a supervision order. The interim order provided that the parents shall not have contact with each other in the presence of the children and that the Father would have access with the children upon terms and conditions as arranged by the Minister which could include supervision.

[7] On May 28, 2019, the Mother appeared with her current counsel. The Father didn't appear. At the request of the Minister, and consented to by the Mother, I granted a further interim order placing the children in the care of the Mother under a supervision order with the same terms and conditions as the May 3, 2019, interim order.

[8] This proceeding then took an unfortunate, and somewhat perplexing, turn of events.

[9] One day later, on May 29, 2019, the Minister took the children into care.

[10] In an affidavit from the social worker, Paige English-Lillos, filed on June 3, 2019, she provided the following evidence:

- On May 29, 2019, the Agency received a referral from the vice-principal of the children's school advising that the Mother came to school and told the children that they were leaving for Ottawa the next morning to stay with their grandmother. The Mother said that she would join them later. She had reported to a staff member that someone had held a gun to her head that morning so she was taking the boys. She then removed the children from the school.
- On May 29, 2019, the Agency received a referral from the Mother's income assistance worker who reported that the Mother was seeking funding to go to Ontario with the children. The Mother told her that the Father's uncle came to her residence and put a gun to her head earlier that day.

- On May 29, 2019, Ms. English-Lillos consulted with her supervisor. The Mother had been staying at a motel and it was concluded that the Mother must take the children to Bryony House that evening in order to ensure their safety. The Agency also determined that a social worker would confirm with the children's grandmother in Ottawa that the children would be going there in the morning.
- Ms. English-Lillos spoke to the Mother and asked her what her safety plan was for the children. The Mother advised she was getting plane tickets the following day for the children so they could live with her mother and sister in Ottawa. Ms. English-Lillos advised the Mother that an immediate safety plan had to be put into place and that the Agency expected her to take the children to Bryony House for the night and then to the airport for Ottawa in the morning. Ms. English-Lillos said the Mother began yelling on the phone that she would not take the children to Bryony House and refused to follow this safety plan.
- Another social worker spoke later again with the Mother and reiterated that the Agency's expectation was that she was not to return to the motel with the children in order to ensure that they were not exposed to any further risk of harm by the Father and his uncle. The Mother became escalated and volatile.
- The Mother refused to go to Bryony House but asked the Agency if the children could be taken into care for the night so she could remain at the motel as she had her medication and clothing there. The worker advised that "it would not be that simple".
- A Risk Management Conference was held on May 29, 2019. The Agency made a decision to take the children into care due to the Mother's lack of follow through, inability to provide information or follow a safety plan, and insistence that she wanted to return to a motel with the children where it was unsafe.

[11] The Minister filed a Notice of Motion to Vary Interim Order on June 3, 2019, seeking an order varying my Interim Order granted on May 28, 2019, by now placing the children in the Minister's interim care and custody.

[12] In the supporting documents, the Minister indicated that the motion would require 15 minutes or less in Chambers. At the Minister's request, an appearance was scheduled for 15 minutes before me on June 5th during the lunch hour as I was booked with several other matters that day.

[13] In Ms. English-Lillos' affidavit filed on June 3, 2019, she deposed under the section, "Relief Sought":

"I believe that it is in the best interests of the children...that they remain in the care and custody of the [Mother], subject to the supervision of the Applicant, the Minister of Services."

[14] The Minister's counsel acknowledged that this reference was an error because the Minister had already taken the children from the Mother's care and was now seeking to vary the May 28, 2019, interim order by having the children remain in the Minister's temporary care and custody.

[15] At around 4:30 p.m. on June 3rd, the Mother's counsel filed an affidavit from the Mother. The Mother requested an immediate return of the children to her care. In her affidavit, she stated, amongst other things:

- She had been staying with the children at the Wedgewood Motel. The Father was taking the children back and forth to school and the only restriction was that she and the Father were not permitted to have contact with each other, when the children were present.
- She is from Ottawa and does not have any family or close friends in Nova Scotia. She didn't intend to reconcile with the Father as he has continued to cause problems for her since the child protection proceeding started.
- The Father's uncle held a gun to her head on May 29th at the motel and threatened her. She was very scared and has ongoing issues with the Father as he will not leave her alone and she is scared that he is going to do something serious to her.
- When she was asked to take the children back to Bryony House on May 29th, she initially refused as she thought she would be safe at the motel that night. She was confused, overwhelmed, and scared, because she had just had a gun

held to her head. She said she wasn't thinking straight. She then later agreed to go to Bryony House with the children but wasn't allowed to do so because the Agency took the children into care. She then went to Bryony House alone that night and has been there ever since.

- Her plan was to move back to Ottawa with the children where her mother and sister live. If the children were returned to her immediate care, she would coordinate moving to Ottawa with the Agency and was willing to continue to stay at Bryony House with the children until the day that they left for Ottawa.

[16] On June 5, 2019, the day of the 15 minute appearance scheduled by the Minister to hear the motion to vary the May 28th interim order, the Minister filed a second notice of motion to vary that interim order. This time, however, the Minister no longer sought to have the children remain in the Minister's temporary care and custody. Rather, the Minister now sought to have the children placed in the interim care and custody of the Father.

[17] A third affidavit was filed by Ms. English-Lillos on June 5th. It again incorrectly indicated under the section, "Relief Sought", that the Minister believed it was in the best interests of the children that they remain with the Mother under a supervision order.

[18] In her affidavit, Ms. English-Lillos stated:

- On May 31, 2019, the Father advised:
 - the Mother had smashed her whole motel room and even smashed the toilet;
 - he thought the mother was on a cocaine binge as she used to use cocaine;
 - the Mother said she was going to give the children to foster care if he didn't go back with her; and
 - he thought the Mother was going through some sort of "mental health breakdown".
- During an access visit the Mother had with the children on June 3rd, Ms. English-Lillos observed the Mother make several inappropriate comments to the children, stating that "foster homes aren't fun places" and "some kids

stay in foster care forever”. When Ms. English-Lillos asked to discuss this with the Mother in the hallway, the Mother started to yell at her in front of M and presented as “extremely escalated and volatile”.

- During an access visit the Father had with the children on June 3, 2019, Ms. English-Lillos felt he was very positive and appropriate with the children. At one point, K stated, “I know what you did to mom, you choked her” to which the Father redirected K and stated they should discuss something else. Ms. English-Lillos said the Father was positive about the children’s experience and that he encouraged them to be on their best behaviour and to be kind to other children.
- On June 3rd, the foster parent advised that M was being violent and hit a toddler in the home. Thus, the foster parent was no longer willing to keep the children after 8:00 a.m. the following day.
- A new foster home was not available for both children. M was placed in a “Place of Safety” and K could stay in a foster home separated from M. Thus, it was decided that the Father would be investigated to determine if the children could have an extended access visit with the Father until the Agency could ask the Court to place the children with him under a supervision order.

[19] All parties appeared for the 15 minute appearance on June 5th. I summarize the positions they took that day as follows:

The Minister: The children should be immediately placed in the interim care and custody of the Father. The Minister advised that the children had already been staying with him under an extended access agreement.

The Mother: The children should be immediately returned to her care under a supervision order.

The Father: The children should immediately be placed with him.

[20] The Mother’s counsel advised that she didn’t have the opportunity to review with the Mother the latest affidavit filed by the Minister earlier that morning. She

said the Mother may wish to respond to it. Nevertheless, the Mother was still insisting that the children be returned to her that day.

[21] The Father hadn't filed any affidavit. He appeared without counsel. He advised that he wished to file affidavit evidence refuting various claims made by the Mother against him and his uncle.

[22] The Minister's counsel indicated that she wished to cross-examine the Mother on her affidavit. The Minister's counsel also advised that M remained in a Place of Safety which was a hotel where people watched him and that there was no option where the boys could be placed together. Thus, the Minister felt that returning the children to the Father was the "least intrusive" option. No clear explanation was given to me that day as to why both boys simply couldn't be placed together in a Place of Safety so that they wouldn't be separated.

[23] I expressed concern about the very late filings by the Minister on the morning of June 5th which sought very different relief than what was sought in the first motion to vary filed on June 3rd. I pointed out that, at the Minister's request, the appearance before me was scheduled for only 15 minutes.

[24] I also took the time to outline some of the evidence presented to me by the Minister which caused me serious concern about granting an order which simply placed the children in the Father's care without a hearing. While I didn't go through all of the evidence, by this point, Ms. English-Lillos had filed three affidavits. In those affidavits she provided the following evidence:

- On March 1, 2019, the Enfield Detachment of the Royal Canadian Mounted Police, provided the following referral:

“Police received a 911 hang up call of a domestic assault. Police attended and took [the Father] into custody. Numerous charges. Two children were present during the domestic assault, however neither were physically assaulted. [The Father] released this morning before a judge on conditions (unknown at this time). No court date yet.
- On March 1, 2019, the Mother advised things have been “awful” between her and the Father. On March 1, 2019, she was in bed with the children and K was sick. The Father was out drinking for the evening and she didn't think

he would return home. When he did, she was asleep in the bed with K and the Father started yelling at her, pulled her out of the bed by her feet, slapped her and grabbed her by the throat and called her a child molester because she slept in the same bed as the children. The Mother advised that she spoke with Victim Services who advised that the Father was released on conditions not to have contact with her or to attend the residence. She understood the Agency direction that she was not to have contact with the Father in the presence of the children as it would place her and the children at a risk of harm.

- On March 8, 2019, the Domestic Violence Coordinator with the Halifax Detachment of the Royal Canadian Mounted Police sent the Initial Designation of High Risk Case Form to the Agency designating the file as a “high risk of lethality”. The Father was charged with two counts of uttering threats to cause death or bodily harm, and one count of assaulting a peace officer.
- On March 18, 2019, a worker at Bryony House advised that the Mother and children had left Bryony House.
- On April 1, 2019, Ms. English-Lillos attended the Wedgewood Motel for an unannounced visit with the Mother and the children and discovered that the Father was present. Ms. English-Lillos reiterated to the Mother that she and the Father were not to be together in the presence of the children and, after consulting with her supervisor, advised the Mother that the Father would need to immediately leave the motel room and that she and the children were expected to return to Bryony House to ensure their safety.
- On April 3, 2019, Ms. English-Lillos spoke to the Father. She explained to him that the Agency’s expectation was that he and the Mother not have any contact in the presence of the children. Ms. English-Lillos stated that the Father interrupted her several times and appeared to minimize the incident of domestic violence, stating that he didn’t do anything wrong. He denied the incident was “significant” and said it was “a little argument” and that he knows he didn’t hurt the Mother. He admitted that he kicked a police officer in the chest and grabbed the ambulance driver and that was “significant”.

- On April 9, 2019, the Domestic Violence Coordinator of the Halifax RCMP advised that she had completed a priority form for the Mother and the children to be placed at the top of the list with the Metropolitan Regional Housing Authority. She indicated that the relationship between the Mother and the Father remained designated as a “high risk”.
- On May 1, 2019, the Mother advised she would be staying at the Wedgewood Motel as the Housing Authority provided funding for her to stay there with the children.
- On May 28, 2019, the Mother reported:
 - The children had a visit with the Father a week and a half ago.
 - After returning from their visit with the Father, M was crying and said his dad had grabbed him by the shirt and had scratched him with his nails.
 - The Mother said there were marks on M from being scratched by the Father and she took pictures of those marks.
 - The Mother thought that the Father was drinking during his access visit and said that he drinks and drives before or during access with the children.
 - The Father keeps saying the children need a slap in the mouth when they are bad but she doesn’t agree with physical discipline.
- On June 3, 2019, Ms. English-Lillos heard K say to the Father, “I know what you did to mom, you choked her”.
- In the Agency’s Risk Management Conference Minutes of June 4, 2019, of Ms. English-Lillos noted:

“Since taking into care on Wednesday, May 29th, each day there are increasing concerns being identified regarding the children and what they may have been exposed to based on M’s volatile, unpredictable and aggressive behaviour which includes threat of self harm and K’s appearance of disengaging from [the] situation around him. Pre Wednesday May 29th, there was no known information that would raise concern for the emotionally [sic] wellness of either of the children, however, after coming into care, concerns are increasing that

there is trauma and possibly significant mental/emotional wellness issues for each boy.

This morning, when workers went to pick up the children to return to [the] father's care as decided in risk conference yesterday, at first both boys were cooperative and compliant and then M had an extreme behavioural event. He refused to come in the car, threatened to kill himself, to drown himself in the pool (which was present), and jump in front of the car. K was calm, kept playing, and the only comment he made was that his mom told him his dad is a criminal and his mom told him his dad doesn't have a job and he steals, and he stole 200 canoes. M kept stating that dad is a criminal and dad tried to kill his mom." [Exhibit 3, Exhibit A, last page (emphasis added)].

[25] I also pointed out to the Minister's counsel that my recollection was that at the initial appearance before me on May 3, 2019, the Father advised that he was not disputing the allegations of domestic violence against him but was only challenging the restriction that he and the Mother couldn't have contact together with the children.

[26] In light of the evidence, I expressed considerable reservations about the Minister's insistence that I place the children with the Father on June 5th during the 15 minute appearance largely on the basis that it was the "least intrusive" option.

[27] Similarly, in light of the evidence presented to me in Ms. English-Lillos' affidavits of June 3rd and June 4th, I expressed considerable reservations about the Mother's insistence that the children simply be returned to her care that day.

[28] Thus, after hearing from all parties, I advised that I had concluded that all parties should be given the opportunity to a fair hearing which allowed each party to file evidence and cross-examine the other parties on their evidence. I indicated that conducting such a hearing simply wasn't possible in the 15 minutes of time requested by the Minister on June 5th for the motion to vary. Furthermore, I had another court appearance immediately following the 15 minute appearance. I therefore reviewed my docket and advised that I could bring the parties back for a 1.5 hour slot I had open up on June 12th.

[29] The parties agreed to come back then and I gave them filing deadlines for the hearing. I also indicated that, in an effort to stabilize the situation until we came back, that the children would be placed in the temporary care and custody of the Minister. I did so knowing that this was not the position of either the Minister or the parents as to where the children should be placed.

[30] On June 7, 2019, all parties filed additional affidavits. On June 10, 2019, the Minister filed a third Notice of Motion to Vary Interim Order. Once again, the Minister's position changed significantly. The Minister now once again sought to vary the May 28, 2019, interim order so that the children were placed in the interim care and custody of the Minister. In the fourth affidavit filed by Ms. English-Lillos on June 7th, she stated:

- There have been concerns with respect to [the Mother]. The information we have received from [the Mother] has changed many times and therefore the Agency needs time to investigate the truthfulness of her reportings.
- [The Mother] advised me on June 5, 2019 that [the Father] had a room at the Wedgewood Motel at the same time she was living with the two children at the Wedgewood Motel. She advised that they were living as a family and had not separated. They were parenting together and had plans to get adjoining rooms.
- [The Father] advised me he did have a room at the Wedgewood Motel and was parenting the children with [the Mother] until May 29, 2019.
- There are concerns with respect to [the Father]. [The Father] has not undergone any services with respect to domestic violence and has shown no insight into the issue.
- [The Father] has been untruthful with respect to where he was living and having parenting time with [the Mother] when there was an order for them not to have contact in front of the children.
- The interactions that were witnessed by Agency social workers between [the Father] and the children have been positive and appropriate. However, due to the concerns, the Agency needed more time to determine the risk to the children and what is in their best interest before the Agency can determine that the children should be placed in his care. It would be in the best interests

of the children if the Agency had a longer period to evaluate [the Father's] parenting.

- The referral with respect to [the Father] scratching M is still being investigated by the Agency.
- The referral regarding [the Mother's] drug addiction issues is still being investigated by the Agency.
- The referral regarding [the Father] drinking alcohol in a parenting role is still being investigated by the Agency.

[31] On June 12th, we started the placement hearing. The Minister's case was completed but there wasn't time to conclude the parents' evidence. I therefore reviewed my docket and booked another 1.5 hours I had available to complete the hearing on June 20, 2019.

[32] I also learned that, after the Minister removed the children from the Mother's care on May 29th, the Minister had only arranged a single visit of approximately one hour in length for the Mother with the children in the preceding two weeks. That visit occurred on June 3rd. No further visits were scheduled although Ms. English-Lillos indicated that she would contact the access team and "will try and make the arrangements happen". The Father, on the other hand, was having open unsupervised access with the children and was able to see them for a couple of hours each day.

[33] I expressed concern about the Mother's lack of access and urged the Minister to come up with a set access schedule for her before we came back on June 20th.

[34] We came back on June 20th and completed the placement hearing. I learned that an access schedule had now been put in place for the Mother. Ms. English-Lillos deserves credit for moving this issue forward.

3.0 Issue: Where should the children be placed?

4.0 The Law

[35] The purposes of the *CFSA* are to protect children from harm, to promote the family's integrity and to assure children's best interests: subsection 2(1).

[36] In *CFSA* proceedings, the children's best interests are paramount. At different points in a child protection proceeding, the *CFSA* directs me to consider "the best interests of a child" when making an order or a determination. When that happens, subsection 3(2) dictates that I consider those enumerated circumstances which are relevant. I broadly group them into five general areas: the child's existing relationships; the child's present needs; the child's preferences if they are reasonably ascertained; future risk; and other relevant circumstances.

[37] The Minister seeks to vary the May 28, 2019, interim order. Section 39 of the *CFSA* governs. The relevant subsections include:

Interim Hearing:

39(4) Within thirty days after the child has been taken into care or an application is made, whichever is earlier, the court shall complete the interim hearing and make one or more of the following interim orders:

...

(b) the child shall remain in, be returned to or be placed in the care and custody of a parent or guardian or third party, subject to the supervision of the agency and on such reasonable terms and conditions as the court considers appropriate, including the future taking into care of the child by the agency in the event of non-compliance by the parent or guardian with any specific terms or conditions;

(c) a parent or guardian or other person shall not reside with or contact or associate in any way with the child;

(d) the child shall be placed in the care and custody of a person other than a parent or guardian or third party, with the consent of that other person, subject to the supervision of the agency and on such reasonable terms and conditions as the court considers appropriate;

(e) the child shall remain or be placed in the care and custody of the agency;

(f) a parent or guardian or third party shall have access to the child on such reasonable terms and conditions as the court considers appropriate and, where an order is made pursuant to clause (d) or (e), access shall be granted to a parent or guardian unless the court is satisfied that continued contact with the parent or guardian would not be in the child's best interests;

...

39(5) Where, subsequent to an interim order being made pursuant to subsection (4), the agency takes a child into care pursuant to Section 33 or clause (b) of subsection (4), the agency shall, as soon as practicable but in any event within five working days after the child is taken into care, bring the matter before the court and the court may pursuant to subsection (9) vary the interim order.

39(6) In subsection (7), "substantial risk" means a real chance of danger that is apparent on the evidence.

39(7) The court shall not make an order pursuant to clause (d) or (e) of subsection (4) unless the court is satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to the child's health or safety and that the child cannot be protected adequately by an order pursuant to clause (a), (b) or (c). [Emphasis added].

39(9) The court may, at any time prior to the making of a disposition order pursuant to Section 42, vary or terminate an order made pursuant to subsection (4).

5.0 Burden of Proof

[38] The Minister acknowledged that she bears the burden of establishing on a balance of probabilities that there has been a material change of circumstances since the May 28, 2019, interim order which now justifies the children being placed in the temporary care and custody of the Minister on the basis that there are reasonable and probable grounds to believe that there is a substantial risk to the children's health or safety that cannot be adequately protected by an order pursuant to subsection 39(a), (b) or (c) of the *CFSA*.

6.0 Substantial Risk

[39] “Substantial risk” is a real chance of danger that is apparent on the evidence: subsection 22(1) of the *Children and Family Services Act*. It is the real chance of physical or emotional harm or neglect that must be proved to the civil balance of probabilities standard. That future physical or emotional harm or neglect will actually occur need not be established on a balance of probabilities: *MJB v. Family and Children Services of Kings County*, 2008 NSCA 64 at paragraph 77, adopting *B.S. v. British Columbia (Director of Child, Family and Community Services)*, (1998), 160 D.L.R. (4th) 264, at paragraphs 26 to 30.

[40] The meaning of “health or safety” outlined in s. 39(7) of the *CFSA* was described by Judge Dyer in *Nova Scotia (Minister of Community Services) v. M.(D.)*, 2010 NSFC 34, as follows:

[62] In my opinion, they should be interpreted broadly. In some cases, health and safety risk will be obvious or clearly evident. In some cases the risks may be more subtle. To that end, agencies often lead some evidence in the early stages of past parental conduct and past agency involvement, if applicable, from which it may be inferred that (coupled with current events) there is a probability of inappropriate conduct repeating itself.

7.0 The Parties’ Positions:

a) The Minister’s Position

[41] The Minister asks that the children remain in the Minister’s temporary care and custody on the basis that the evidence establishes that there would be a substantial risk to their health and safety if they were returned to either parent’s care under supervision, with or without a no-contact order. The primary concern of the Minister is the children being exposed to domestic violence between the parents: Minister’s Pre-hearing Brief: Page 2

b) The Mother’s Position

[42] The Mother asks that the children be returned to her care under a supervision order. She agrees to remain in Bryony House, or have specific arrangements in place that would allow her to go to Ontario with the children. She agrees to have

no contact with the Father and said she had no intention of resuming a relationship with him. Her alternative position is that the children remain in the Minister's care rather than be returned to the Father's care.

c) The Father's Position

[43] The Father asks that the children be returned to his care under a supervision order. He says he wants no contact with the Mother. His alternative position is that the children should remain in the Minister's care rather than be returned to the Mother's care.

8.0 The Evidence

[44] In addition to the evidence I already outlined, additional evidence was presented through affidavits or questioning of witnesses. I will group some of that evidence into various headings relating to child protection concerns.

a) The Children's Ongoing Exposure to Domestic Violence and Conflict:

[45] Despite the two interim orders of May 3, 2019, and May 28, 2019, prohibiting contact between the parents in the presence of the children, both parents obtained rooms at the Wedgewood Motel and, to a large extent, were parenting the children together in the presence of the children. The Mother described one of the interactions as follows:

“In mid-May, I took the kids to [the Father's] room, to have a visit until suppertime. He had a few drinks while we were there, and began to fall asleep. M and K were jumping on [the Father's] bed. [The Father] grabbed M by his shirt, and left scratch marks across his chest. I took the kids back to our room. M was crying, and saying his chest was stinging. I lifted his shirt and saw the scratches. I hugged M and told both kids I love them, and we don't hurt each other or other people out of anger.

I took pictures of the marks on M, and I informed Paige English-Lillos, about this incident...”: Exhibit 9, Paras. 7-8.

[46] The Mother also outlined historical concerns about the Father as follows:

“I am very concerned about [the Father’s] ability to control his temper around the children, as he gets mad very easily, and resorts to physical aggression and violence. This has been directed at me many times, and it hasn’t mattered to [the Father] that the children are present. His temper is worse when he is drinking, and he drinks every day.”:
Exhibit 9, Para. 10

“...K’s statement about [the Father] choking me is based on him witnessing his father’s actions. M is also aggressive with others because he has witnessed his dad being physically violent to me and to his 22 year-old son. I tell both M and K that this is not how we treat people. [The Father] gets upset when I say things like that to the kids.”: Exhibit 9, Para. 22

[47] The Father acknowledged things had, at times, become physical between he and the Mother during the course of their relationship. He confirmed that he had been staying at the Wedgewood Motel and having contact with her despite the no-contact provision. His evidence included:

- The Mother threatened to place the children in the Minister’s care if he did not remain in a relationship with her or allow her to take the children back to Ottawa. He agreed to this which is why he didn’t show up on the May 28th court appearance although he drove her to the court.
- The Mother kicked his door in at the motel breaking the lock and then entered his room. She smashed his television so he forcefully removed her from the room. She then re-entered the room and tried to grab his computer. He took the computer and left. When he returned, he discovered that she had stolen everything from his room and threw out various items of his.
- He made various allegations against the Mother and suggested that “she is very clearly not mentally stable”. He said she yells and screams all the time in front of the children and at them. He says while he is not “perfect”, he has much better parenting skills than the Mother and he would welcome any and all supervision by the Minister and would like the Minister to impose counselling, random drug testing, or anything else.

- He acknowledged that he felt the Mother sleeping with the children in the same bed on a regular basis was “border line molestation” and this led to him pulling the Mother by the foot out of the children’s bed angrily after he returned home from the bar. This led to his assault charge. He says this isn’t an excuse but it is his reason.
- The Father confirmed that, as a result of the incident between he and the Mother on March 1, 2019, he recently pled guilty to assaulting the Mother, assaulting the ambulance driver and uttering a threat to a police officer.

[48] During cross-examination by the Father, the Mother acknowledged the following:

- When he and the Mother argue, he almost always leaves when he gets too upset and she has responded by calling him “chicken” or “coward”;
- While they both were staying at the Wedgewood Motel, she would cook dinner in his room;
- Before she moved into Bryony House, she had thrown the children’s items out on the street; and
- The uncle, who she accused of threatening her with a gun, had offered to pay her way with the children to Ottawa but she refused.

[49] The Father also introduced texts between he and the Mother from May 26 to 28, 2019, [Exhibit 12] which she acknowledged sending. In those texts the Mother stated, amongst other things:

“Your uncle came between us and u let it happen.
We had something good going on...I need and miss you so fucking much.”

“Bless [the uncle] he is a good man and we should listen to him.
I’m so sorry for what ever I did.
I love you with all my heart we all do...”

“You think you left us stranded struck with no money.
Your just jealous that your uncle is a good man.

We have everything we need then some. You will never sink me to your level.

I appreciate all your uncle did.”

[50] The Father’s uncle also filed an affidavit on June 7th. His evidence included the following:

- He strenuously denied that he had ever threatened the Mother in any way.
- He initially tried to help out the Mother. He had offered to pay to move her to a different motel and also pay for her plane ticket with the children to Ontario but the Mother refused.
- He became concerned about the Mother’s behavior and told the Father not to contact her. The Mother then started to accuse him of coming between her and the Father.
- He made allegations of volatile behavior by the Mother including that she kicked in the Father’s door at the motel and threw out his belongings.
- He was arrested by the police after the Mother accused him of pointing a gun to her head. He said his room was searched and he was later released with no charges being laid.
- He says he is worried that he was the Mother’s target now that the Father has gone away and that she will try something to lock him up again when all he was trying to do was help her because the Father and the children are “his blood”.
- He felt like his rights have been violated and that the Mother has made false statement against him so he would be coming to court to make sure that she doesn’t make up “any more crazy stories”.

[51] The Father’s uncle appeared on June 12th for the hearing. Where he was a non-party witness, I excluded him from the courtroom. I was subsequently advised that none of the parties, including the Mother, had any questions for him on his affidavit. Thus, the Father’s uncle’s evidence was not directly challenged through cross-examination.

b) The Negative Effect that Domestic Violence and Exposure to Parental Conflict has had on the Children

[52] Both parents acknowledge that these children have been exposed to domestic violence in the home. Their evidence included:

- M was a very aggressive child. They were aware that M's foster placement broke down because he was violent towards another child in the foster home. As noted earlier, the Mother believes that M is aggressive with others because he has witnessed the Father being physically violent towards her and to his 22-year-old son.
- The Father acknowledged that he accidentally scratched M while pulling him off K. He says M is very aggressive with K and other children and sometimes he needs to be handled and "that's just the way it is". He says that's not abuse. Rather, it's parenting a child that has anger issues.
- Both parents indicate that they would never put the children in harm's way. For example, while the Father says he is "not an angel", he always puts the children as his first priority and would never harm them in any way. He nevertheless described both of his children as being "traumatized" and acknowledged he has had a part to play in this. When I asked him to explain why he said this, the Father stated that he and the Mother have argued a lot in front of the children and that it takes two to argue. He also stated that while he never struck the Mother in a violent way, he has grabbed her six or seven times in the last ten years.

c) Allegations of Substance Abuse

[53] Both parents allege that the other parent has used cocaine in the past. The Father suggests that he believed that the Mother may be using cocaine again – something which the Mother adamantly denies. She said the last time she used cocaine was over 2 ½ years ago.

[54] The Father recently pled guilty to driving under the influence along with the other charges of assaulting the Mother, assaulting an ambulance driver, and uttering a threat to a police officer. His license has been suspended and he

acknowledged that he had driven the children while his license was suspended. He says he no longer does so.

9.0 Conclusion on Placement:

[55] Both parents strike me as caring deeply for these children. I know it must be painful for both to have the children taken from their care. Both have had prior experience with the child protection system.

[56] The Mother testified she had two older children permanently removed from her care as a result of prior child protection proceedings.

[57] In the Father's affidavit, he says:

“I myself was raised in the Minister[']s care and adopted at the age of twelve as well as my two brothers. I know how my boys feel and it[']s not good. I could go on and on writing for two weeks but if this information [isn't] enough then the system has failed my children as it did me as a child.”

[58] Plainly, both parents have had challenging circumstances to deal with in their lives. I don't pretend to understand what it's like to have lived their lives, or have walked in their shoes. While I may sympathize with the parents' feelings and experiences, my focus must be on their children's best interests. The child-centered focus of child protection cases means that the best interests of children trumps the wishes and interests of the parents: *C. (G.C.) v. New Brunswick (Minister of Health and Community Services)*, [1988] 1 S.C.R. 1073, para. 14.

[59] Here, the parties agree that there are reasonable and probable grounds that the children are in need of protective services.

[60] When I consider all the evidence and the law, I am satisfied that there has been a material change of circumstances since the May 28, 2019, interim order. I further conclude that it is in the children's best interests that they be placed in the Minister's temporary care and custody as I'm satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to the children's health or safety which cannot be protected adequately by a less intrusive order pursuant to subsections 39(4) (a), (b), or (c) of the *CFSA*, or otherwise.

[61] I come to these conclusions largely for the following reasons:

1. These children have clearly been exposed to domestic violence. Ms. English-Lillos acknowledged that this was the primary reason why the Minister started this proceeding.

A number of cases have discussed the negative impact that exposure to domestic violence has on children. For example, in *M.A.B. v. L.A.B.*, 2013 NSSC 89 – Justice MacDonald stated:

“Children are harmed emotionally and psychologically when living in a home where there is domestic violence whether they directly witness the violence or not. Exposure to domestic violence is not in the best interests of children.” (para. 15).

Since the May 28, 2019, interim order, there have been continued issues of conflict and interaction between these parents contrary to the no-contact provisions of that order. This has unfortunately exposed the children to additional conflict between their parents which causes me significant concern about the ongoing substantial risk to the children’s health or safety.

These parents clearly understood they were to have no-contact with each other in the presence of the children to minimize the risk of further harm to their health or safety. They repeatedly ignored that requirement. This gives me no comfort that I can simply return the children to either parent under a supervision order and accept that he or she will ensure that there is no further contact with the other parent or will adequately protect the children from being exposed to further harm.

2. These children need stability. I’m satisfied that leaving them in the Minister’s temporary care and custody presently best meets this need. Again, these children have been exposed to domestic violence and conflict between their parents. Both parents acknowledge that M is very aggressive. Since the children were taken into care, the Minister has concluded that these children have been exposed to trauma and that the children’s behaviour raises “possible significant mental/emotional wellness issues for each boy”: Exhibit 3, Exhibit A, Risk Management Conference Minutes noted dated June 4, 2019.

Both parents acknowledge that the children have been exposed to conflict in the home and the Father describes both boys as being “traumatized” from same. Similarly, the Mother asserts she believes M is aggressive with others because he has witnessed the Father being physically violent towards her and to his 22-year-old son.

Exposing the children to further instability or conflict in their parents’ lives isn’t in their best interests.

3. While placing the children in the Minister’s temporary care and custody intrudes into the lives of this family, I’m satisfied it’s the least intrusive option consistent with the children’s best interests. It allows the children to be shielded from further parental conflict. The boys are no longer separated but have been placed together in a “place of safety”. While having them placed there isn’t ideal, it is preferable to the boys being separated, or being placed together with either parent and be exposed to a further substantial risk of harm to their health or safety.

4. While the Mother’s counsel suggests that keeping the children away from her would, in effect, punish the Mother as a victim of domestic violence, my focus isn’t on punishing either parent. Rather, my focus and paramount consideration is the children’s best interests. I acknowledge that intimate partner/domestic violence is complex. It often involves power and control dynamics which often don’t make it easy for a victim to simply leave and address the impact of that violence. Breaking the cycle of violence is easier said than done. It often takes time.

Nevertheless, the *CFSA* imposes a positive obligation on parents to protect children from being exposed to violence. Specifically, section 22(2)(i) requires parents, whose children have been exposed to violence, to obtain services or treatment, or take other measures, to remedy or alleviate the violence. Here, the Mother acknowledges that, despite the no-contact restriction, she and the Father continued to parent the children together in the Wedgewood Motel resulting in the children being exposed to further violence and conflict.

5. At the time of the placement hearing, no services were in place to help the parents address the child protection concerns. Thus, the child protection issues

haven't been addressed in any meaningful way to give me any comfort that these children can currently be placed safely with either parent.

[62] While I have determined that I should grant the Minister's variation order, I have some concerns about the steps, and lack of steps, taken by the Minister at the time of the placement hearing. I will state them in the hope this may help move this file forward in a positive way for the children's benefit.

[63] Clearly, both these parents love their children. The Father says that he has first hand experience of what it was like to be in the Minister's care and says, "it's not good". He wants a different outcome for his children.

[64] Both parents, to their credit, advised early on in this proceeding that they will do whatever is required in terms of services designed to address the child protection concerns. No doubt, both parents simply want the children returned to their care.

[65] Unfortunately, at the time of the contested placement hearing:

- the Minister hadn't arranged any services for the parents to help them gain insight into or address the child protection concerns;
- the Minister hadn't arranged any services for the children to help address any issues of trauma. While the Risk Management Conference Minutes of June 4, 2019, state that, prior to May 29, 2019, "there was no known information that would raise concern for the emotionally [sic] wellness of the children", and that it was only after coming into care that the Agency developed concern that "there is trauma and possibly significant mental/emotional wellness issues for each boy", the Minister commenced this proceeding largely on account of the children being exposed to domestic violence in the home. As noted earlier, the notion that children who have been exposed to domestic violence can suffer emotional harm is well-established.

The Agency had been advised by the Domestic Violence Coordinator of the Halifax RCMP that the file was designated as a "high risk of lethality". Furthermore, in the Minister's Notice of Child Protection Application it was asserted that, in addition to other grounds, that there was a substantial risk

that the children will suffer emotional abuse as described in s. 22(2)(g) of the *CFSA*.

Thus, I find it hard to understand on what basis the Minister would say that “there was no known information” that would raise concern about the emotional wellness of either child prior to May 29th.

- The Minister’s position on placement has changed several times in a short period of time including on the day of the original variation application set for 15 minutes on June 5th. While I appreciate the Minister’s counsel’s indication that the Minister must constantly re-assess the level of risk based on the evidence, the Minister’s insistence on June 5th that I place the children with the Father that day was quite concerning to me in light of the evidence known to the Minister at that time. While the Minister argued this was the “least intrusive” option, my paramount consideration must be the children’s best interests and doing what I can, as a judge, to keep them safe from harm.

To her credit, the Minister now acknowledges that if I had placed the children in the Father’s care as requested on June 5th, this would have placed the children at a substantial risk of harm: Exhibit 4, Para. 18.

Unfortunately, due to the changing positions on placement, the end result for these children is that, in a span of less than two weeks, the Minister took them from their Mother’s care, placed them into foster care, then removed them from foster care into the Father’s care under extended access, and then removed them from the Father’s care to place them together in a place of safety in the Minister’s temporary care and custody.

[66] My focus is not to be overly critical of the Minister or the primary social worker. I certainly appreciate that being a social worker is a tough and often thankless job. I also recognize that decisions made on this file were often not made by the social worker alone. Rather, they were often made after consultation with supervisors and others resulting in collective decisions being made by the Agency.

[67] Again, child protection proceedings are not about punishing parents or the Minister. Rather, they are about taking positive steps to ensure that children are protected from harm and addressing any child protection concerns so that children can hopefully be safely returned to their parents’ care in a manner consistent with

the children's best interests. Indeed, as aptly stated by Justice Abella in the Supreme Court of Canada of *AC v. Manitoba (Director of Child and Family Services)*, 2009 SCC 191, the general purpose of the "best interests" standard is to provide judges with a focus and perspective through which to act on behalf of those who are vulnerable: para. 81.

[68] Here, it is the children who are the most vulnerable. They are the ones who have been the most impacted by what has happened.

[69] This proceeding started in April. It is unfortunate that the parties subsequently found themselves embroiled in adversarial litigation in June without any services being put in place to help these parents and children address the child protection concerns. This is less than desirable. It has resulted in the parties focussing their energies on an adversarial process instead of their sole focus being on working together to address the child protection concerns in a positive way for the children's benefit.

[70] Unfortunately, when parties engage in adversarial litigation early in a child protection proceeding, it can often make it more difficult for them to work together after the dust from the litigation settles. Thus, notwithstanding the rocky start to this proceeding, for the sake of these children, I hope and strongly encourage the parties to work together now to address the child protection concerns in a positive way.

10.0 Conclusion

[71] I grant the Minister's variation application of my May 28, 2019, interim order. The children will continue to be placed in the Minister's care and custody.

[72] I direct that the Minister's counsel prepare the appropriate form of Order reflecting my decision.

Jesudason, J.