

SUPREME COURT OF NOVA SCOTIA
(Family Division)

Citation: *Nova Scotia (Community Services) v. G.S.*, 2019 NSSC 296

Date: 20190927
Docket: SFHCFSA 115421
Registry: Halifax

Between:

Minister of Community Services

Applicant

and

G.S. and A.M.

Respondents

LIBRARY HEADING

- Judge:** The Honourable Associate Chief Justice Lawrence I. O'Neil
- Heard:** August 28, 2019; September 3, 4, 5, 10, 11 and 13, 2019, in Halifax, Nova Scotia
- Issues:** Does the evidence support a conclusion that reasonable and probable grounds exist to find the subject children in need of Protective Services at this, the interim hearing stage?
- Summary:** The Court concluded the application of the Minister to find the children in need of protective services should be dismissed and the children should be returned to the care of G.S. The Court found the child protection investigation was incomplete and flawed. Observations of the circumstances of the children which were consistent with the autism diagnosis of the mother were misunderstood as symptomatic of a deterioration of the mental health of the mother.
- Keywords:** Autism; reasonable and probable grounds; interim hearing
- Legislation:** *Parenting and Support Act*, S.N.S. 2015, c.44, s.2
Children and Family Services Act, SNS 1990, c 5
- Cases Considered:** *CFSA and A.C.V. Manitoba (Director of Child and Family Services)*, 2009 SCC 181
(Nova Scotia (Minister of Community Services) v. B.(A.), 2013 NSSC 101
R. v. Sanchez, 1994 (CanLII 5271 (ONSC) 1994
Nova Scotia (Minister of Community Services) v. D.M., 2010 NSFC 34

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Publication restriction: this decision contains information extracted from a file for which there is a restriction on publication as provided by s. 94(1) of The Children and Family Services Act, S.N.S. 1990, c. 5.

“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.”

The Court also relies on its common law power to prohibit the publication of information that has the effect of identifying the subject child.

Counsel: Elizabeth Whelton, Q.C. for the Minister
Susanne Litke, Counsel for G.S.
Morgan Manzer, Counsel for A.M.

By the Court:

Overview

[1] Unless stated to the contrary, herein all the statutory references are to the *Children and Family Services Act*, S.N.S. 1990, c 5, the 'CFSA'. The Respondent mother is referred to as 'G.S.' and the Respondent father is referred to as 'A.M.'.

[2] The Respondents are the parents of two children 'O' born November 17, 2013 and 'H' born April 29, 2016. The Respondent mother has a third child M., now 16, who lives with the child's father in the United States. Both younger children however live in Nova Scotia. They both have special needs. This child protection proceeding concerns the two younger children who are currently in the temporary care of the Minister of Community Services.

[3] The older of these two children has a medical condition commonly referred to as autism, Autism Spectrum Disorder or ASD and the younger of these two children was diagnosed over the past year as having a genetic condition, Wolf-Hirschhorn Syndrome.

[4] The Respondent mother also has autism, having been diagnosed over the past year.

[5] The Respondent parents of these two children live separately. A *Parenting and Support Act*, R.S.N.S. 1989, c. 160 order dated March 2019 provides for the Respondent mother to have primary care of the children and for the Respondent father to have parenting time (exhibit 11, tab A).

[6] The Minister's first child protection proceeding pertaining to the subject children was filed in March 2018.

[7] That proceeding was diverted to conferencing and did not proceed to the protection stage. The decision to terminate the proceeding was taken in June 2019 and the order terminating the proceeding issued in July 2019.

[8] At no time were the children in care during the first proceeding.

[9] At the conclusion of the earlier proceeding, the Minister and the Respondents agreed a set of facts existed as of June 2019 (exhibit 11, tab B).

[10] Paragraph 8 – 10 of that Statement of Facts provides:

8. The Respondent, G.S., has counselling with Jessica Wine.
9. The child, O.S., was diagnosed as being on the Autism Spectrum and has been accepted into the Early Intensive Behavioural Program (EIBI), and intensive intervention offered by the IWK Health Centre.
10. Additionally, the Respondent, G.S., underwent a psychological assessment which included an assessment for autism conducted by Melisa Jones and Shannon Johnson, Erika Baker Psychological Services Limited.
 - (a) No serious mental health disorder was diagnosed;
 - (b) No serious concerns were noted;
 - (c) The Respondent, G.S., was found to meet the criteria for Autism Spectrum Disorder; and
 - (d) Community resources were recommended to the Respondent and she has reported she will pursue these.

[11] On July 25, 2019 the Applicant responded to a report(s) about the Respondent mother's alleged unusual behavior and initiated contact with the Respondent mother. That contact and the Minister's assessment of the circumstances of the children resulted in the Minister taking the subject child(ren) into care on August 2, 2019. That decision is being challenged by the Respondent mother who says there are no reasonable and probable grounds to believe the child(ren) are in need of protective services (s.39(2)).

[12] The Interim Hearing was commenced on August 12, 2019 based on the only evidence before the Court being the affidavit of the Minister. Based on the filings, a reasonable and probable grounds finding was made and the matter was adjourned for a Contested Hearing, a so called 30-day Hearing. The Respondent, G.S. advised at the first appearance that she wished to contest the finding.

[13] We are at the Interim Hearing stage of this new child protection proceeding. This Interim Hearing focused on the family's current circumstances and the parties' history.

[14] The Court has benefited from substantial evidence offered on behalf of the Respondents. This is unusual at the Interim Hearing stage. Generally, Respondents are at a significant disadvantage at the Interim Hearing stage and unable to put forward a serious challenge to the Minister's position.

[15] The Notice of Child Protection Application was prepared and filed August 8, 2019. At that time, the children were already in care, having been apprehended on August 2, 2019.

[16] The grounds offered as the basis for that apprehension and for seeking an order that there were reasonable and probable grounds to believe the children were/are at risk were/are the following:

s.22(2) A child is in need of protective services where

(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a); [Clause (a) states: (a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;]

(e) a child requires medical treatment to cure, prevent or alleviate physical harm or suffering, and the child's parent or guardian does not provide, or refuses or is unavailable or is unable to consent to, the treatment;

(f) the child has suffered emotional abuse, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;

(g) there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse;

(h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to cooperate with the provision of, services or treatment to remedy or alleviate the condition;

(i) the child has been exposed to, or has been made aware of, violence by or

towards

- (i) a parent or guardian, or
- (ii) another person residing with the child,
and the parent or guardian fails or refuses to obtain services or treatment, or to take other measures, to remedy or alleviate the violence;

(j) the child is experiencing neglect by a parent or guardian of the child;

(k) there is a substantial risk that the child will experience neglect by a parent or guardian of the child, and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the harm;

(kb) the child is in the care of an agency or another person and the parent or guardian of the child refuses or is unable or unwilling to resume the child's care and custody;

[17] The Applicant Minister of Community Services seeks *inter alia* an order to continue the temporary care of the children and for the children to remain with the Minister and for the Respondents' access to the children to be supervised.

[18] The principal witness for the Applicant, Ms. Blaikie, summarizes her basis for taking the children into care at paragraphs 6, 91(f) and 96(g) of exhibit 2; her affidavit in support of the Applicant:

6. Although a proceeding pursuant to the Children and Services Act has recently concluded in which the Respondent, G.S., underwent a psychological assessment and received extensive parenting support, recent events have demonstrated a regression in the mental health of the Respondent, G.S., resulting in the Applicant, the Minister of Community Services, taking into care the children, O. S. and H.S.

.

91(f) The Respondent, G.S., again asked why I was present and I again explained there was concern for her mental health that she had gone to neighbours saying she was scared someone was breaking into her home;

.

96(g) I advised the Applicant, the Minister of Community Services, had concerns for her mental health;

The Legal Test(s)

[19] The parties agree the paramount consideration for the Court is to determine what is in the best interests of the subject children (s.2 of the *CFSA and A.C. v. Manitoba (Director of Child and Family Services)*, [2009] 2 SCR 181).

[20] The order this Court is called upon to make upon completion of the Interim Hearing must fall within the options provided for by s.39. The options include dismissal of the application if there are no reasonable and probable grounds to believe the child(ren) are in need of protective services. If there are reasonable and probable grounds to believe the child(ren) are in need of protective services, a range of Court orders are available to provide for protection of a child(ren); the Court being subject to a duty to order the least intrusive protective measure (s.39(4) and preamble to the CFSA).

[21] The burden is on the Minister to establish reasonable and probable grounds exist to believe the child(ren) are in need of protective services as claimed by the Minister and as identified in the CFSA.

[22] Reasonable and probable grounds have been described as grounds that are based on credible and reliable evidence; evidence that is sufficiently objective and leads to conclusions that would cause a reasonably careful and prudent person to form a belief. The belief must be “objectively reasonable and based on some evidence and not be based on mere conjecture, suspicion, a hunch or intuition”. (*Nova Scotia (Minister of Community Services) v. B.(A.)*, 2013 NSSC 101 at paragraph 22 – 23 and *R. v. Sanchez*, 1994 (CanLII 5271 (ONSC) 1994 at paragraph 31).

[23] Removal of child(ren) from the care of the parents herein is only authorized if “there are reasonable and probable grounds to believe that there is a substantial risk to the child’s health or safety” and the child cannot be protected by another order provided for (s.39(7)). Substantial risk is defined as follows: “the children are exposed to a real chance of danger that is apparent on the evidence” (s.39(6)).

[24] The Court’s function at this stage is not to determine if a child(ren) is/are actually in need of protective services.

[25] It is acknowledged the evidence that may be considered at the Interim Hearing stage is subject to a lesser standard of admissibility than is applicable at later stages of a child protection proceeding: “The Court may admit and act on evidence that the Court considers credible and trustworthy in the circumstances” s.39(11).

[26] In the Minister’s pre-summation brief emphasis is placed on the meaning of ‘health or safety’ as that language is used in s.39(7). This language is broader than the grounds enumerated in s.22(2) and inclusive of those definitions of circumstances when a child is in need of protective services.

[27] As already observed, this Court is in the unusual position of having heard from all parties and a number of witnesses called by each at the Interim Hearing stage. Unlike the Court in *Nova Scotia (Minister of Community Services) v. D.M.*, 2010 NSFC 34, this Court has had cross-examination by experienced counsel and heard expert evidence offered on behalf of both parties.

The Evidence

- Ms. Blaikie

[28] Ms. Blaikie’s initial evidence filed in support of the Application (exhibit 2) is organized into three sections:

- (a) Historical concerns, paragraph 10 – 62;
- (b) First proceeding, March 27, 2018 – July 12, 2019, paragraph 6 - 83; and
- (c) Recent events, paragraph 84 - 105

-(A) Historical Concerns: as reported/summarized by Ms. Blaikie

[29] In 2005 a report was received that the Respondent mother had been a victim of domestic violence in the presence of her first child – a child not subject to this proceeding.

[30] In 2007 a report was received that the Respondent mother had taken her child by the arm in an inappropriate manner.

[31] In 2009 – 2012 the paternal grandparents to the child reported they had been asked to care for G.S.’s oldest child because G.S. found the child was difficult to

manage and the paternal grandparents were concerned for the Respondent's mother's mental health.

[32] The Respondent mother's response at the time is reported at paragraph 17 of exhibit 2. Other involvement of social workers and concerning the child 'M' is described and conflict between the Respondent mother and the child is referenced.

[33] No child protection proceeding was initiated. This child 'M' left the care of G.S. in late 2016 to live with her father.

[34] In 2016 social workers again visited the Respondent mother's home. Clutter in her home was noted and concerns about the Respondent G.S. being able to manage were noted.

[35] In 2017 the Respondent G.S. contacted police to report a verbal altercation with the Respondent A.M.

[36] In February 2018 the IWK reported to Community Services that the Respondent G.S. reported 'disclosures' by her son 'O' and brought the child to the hospital expressing concern 'O' had been sexually assaulted by the Respondent A.M. Throughout February 2018, concerns about the health of the child 'O' and possible sexual abuse maintained the interest of social workers employed by the Minister of Community Services.

[37] Also, in February 2018 the Respondent A.M. expressed concern about the Respondent G.S.

[38] In March 2018 the Respondent G.S. was advised an assessment of her mental health was being sought by the Applicant (exhibit 2, paragraph 54(j) & (k)). Further concern developed that the child H. was not attending medical appointments (exhibit 2, paragraph 56).

[39] Exhibit 2 references other expressions of concern attributable to the Respondent G.S. that her child had been sexually assaulted by persons. Other concerns about the state of the home were noted.

[40] Within the foregoing context, the Applicant filed a Notice of Child Protection proceeding on March 27, 2018 and sought a supervision order. It was granted at the Interim Hearing stage.

[41] As stated, the matter was referred to conferencing and terminated in June/July 2019 without ever going to the protection stage.

-(B) First Proceeding: March 2018 – July 2019

[42] As a result of the conferencing, the Respondent G.S. was referred for a psychological assessment, including an assessment for autism. It was completed in the first part of 2019 ending May 2019 (although the assessment bears a date of February 2019).

[43] In October 2018 the child ‘O’ was diagnosed as having Autism Spectrum Disorder.

[44] Observations that the Respondent’s apartment was untidy and cluttered continued.

[45] In February 2019, the EIBI, Early Intensive Behavioural Program to support the parenting of the child ‘O’ was put in place. The child was also referred to the EIBI program of the IWK Health Centre.

[46] In June 2019 Ms. Blaikie visited the Respondent G.S. with a view to discontinuing the CFSA proceeding.

[47] The concerns remaining were the need for the children to remain connected with supports and maintenance of the home as clean and uncluttered (exhibit 2, paragraph 78(a). The Respondent G.S.’s residence was noted to be appropriate although kitchen counters were described as cluttered.

[48] Ms. Blaikie was concerned about the Respondent G.S.’s presentation.

[49] In response to concerns of Ms. Blaikie as described above, after hours social worker, Claudia Power, attended the home of Respondent G.S. the evening of June 6, 2019.

[50] Ms. Power did not observe concerns with the Respondent G.S.'s presentation. Ms. Power testified at the hearing.

- Evidence of Claudia Power (exhibit 15) June 6, 2019

[51] Ms. Power reported that there were no obstacles limiting her access to the Respondent G.S.'s apartment when she visited the apartment the evening of June 6, 2019.

[52] The children were seen and judged to be wearing clean clothes and no issues with their care was apparent. Concerns about G.S.'s health were not noted by Ms. Power.

[53] Ms. Power confirmed she has experience working with persons with autism and did not have difficulty communicating with the Respondent G.S.

[54] On June 20, 2019 progress of the child 'O' in the EIBI program was reported to Ms. Blaikie by Pam MacDonald, an EIBI worker. Ms. MacDonald also stated she had no concern with respect to the Respondent G.S.

[55] On June 21, 2019 an agreed Statement of Facts was concluded in anticipation of the termination of the child protection proceeding. The termination was effective July 12, 2019.

-(C) Recent Events: July 23 – August 2, 2019 (exhibit 2, paragraph 84 – 97)

[56] On July 23, 2019 the Respondent A.M. called Ms. Blaikie to complain about the Respondent G.S. However, he advised he did not have concerns for the safety of the children.

[57] It appears the fact the Respondent G.S. had decided to not accept financial support from him was a 'concern'.

[58] Two days later an anonymous source said the Respondent G.S. was expressing concern about possible break ins to her residence. The implication being her behaviour was not rational.

[59] Ms. Blaikie contacted the daycare attended by the children.

[60] The evening of July 25, 2019 a social worker, Ms. MacLean and a student social worker, Vanessa Robinson visited the home of the Respondent G.S.

[61] Significant attention is devoted to describing what objects lined or impaired movement along the pathway to the door of the Respondent G.S.'s apartment.

[62] For clarity, the apartment is on a second level and is reached by climbing outside stairs and crossing a landing/deck (see exhibit 13).

[63] A discussion ensued with the Respondent G.S. One of the social workers explained her presence on the basis of concern for her mental health (paragraph 88(m)).

[64] The next day, July 26, 2019, Ms. Blaikie and another social worker attended the home of the Respondent G.S. with two police officers.

[65] On July 29, 2019 Ms. Blaikie and the student social worker visited the apartment of the Respondent G.S. Ms. Blaikie also called the children's daycare that day.

[66] Finally, on August 2, 2019 Ms. Blaikie visited the residence. She reports she was concerned about the placement of sticks on the driveway or walkway to the building; the location of a baby gate at the bottom of the stairs and she expressed concern about the Respondent G.S.'s mental health.

[67] Ms. Blaikie describes the apartment as having been barricaded, cluttered and unclean. She says the Respondent G.S. was wearing dirty and poorly fitting clothing.

[68] Following this home visit, a decision to apprehend the subject children was taken. They were apprehended from their daycare the same day.

[69] Ms. Blaikie says the children were unkempt, dirty and matted when apprehended.

- **Evidence of Ms. Willow MacLean (exhibit 4) July 25, 2019 visit**

[70] As stated, Ms. MacLean visited the home of the Respondent G.S. the evening of July 25, 2019 with Vanessa Robinson and two police officers as a wellness check. The primary concern communicated to her was G.S.'s mental health.

[71] She describes items as limiting passage to the front door of the Respondent G.S.'s apartment. She said the child mattress was not blocking the door. It was not a barricade.

[72] Discussion between Ms. MacLean and the Respondent G.S. focused on the Respondent G.S.'s desire to secure her apartment from intruders and to seek the assistance of neighbours in doing so.

[73] Ms. MacLean told the Respondent G.S. she was there making a wellbeing check because of concern for the mental health of the Respondent G.S.

[74] She says she noted a knife on a lower shelf and describes the kitchen as cluttered, but Ms. MacLean did not have safety concerns. The children were clean, content and wearing clean clothes. She said the home was cluttered and untidy but not unsafe.

- Evidence of Ms. Rasmussen (exhibit 3) July 26, 2019 visit

[75] On July 26, 2019 Ms. Rasmussen attended the home of the Respondent G.S.

[76] She was asked to accompany Ms. Blaikie. They were accompanied by two police officers. She had not seen the report of the home visit the night before.

[77] She confirms the principal concern of social workers related to the mental health of the Respondent G.S. The home is described by Ms. Rasmussen as having been cluttered at the time.

- Evidence of Ms. Robinson (exhibit 5) July 25 and 29, 2019 and August 2, 2019 visits

[78] As referenced, the evening of July 25, 2019 Ms. Robinson visited the home of G.S. with Ms. MacLean. She says she was told by the Respondent, G.S.'s purpose in contacting a neighbour was to seek assistance in moving garbage and at the time,

she was expressing concern about people breaking into her apartment (paragraph 2(n)).

[79] Ms. Robinson says a deck-chair, a mattress and a piece of luggage were blocking passage to the apartment door of the Respondent. She says the Respondent repeated concern about her susceptibility to break ins.

[80] Again, concern was expressed to the Respondent about her mental health.

[81] With respect to the July 29, 2019 visit of Ms. Robinson, Ms. Robinson says the Respondent G.S. spoke of getting security cameras.

[82] Ms. Robinson returned on August 2, 2019 with Ms. Blaikie and again significance is attributed to a bundle of sticks being on the driveway/walkway and a baby gate being secured at the bottom of the outside stairs leading to the second-floor location of the Respondent G.S.' apartment.

[83] She confirms concern was expressed for the mental health of the Respondent G.S.

[84] The stairs are described by Ms. Robinson as 'barricaded' (paragraph 6(p)). These were addressed as safety hazards.

[85] The Respondent is described by Ms. Robinson as showing "little emotion and exhibiting a blank look on her face", (exhibit 5, paragraph 6(v)) and as wearing dirty and poorly fitting clothing.

- **Evidence of Katie Brown**

[86] As the Minister prepared to call its last witness on September 5, 2019, it sought to call a new witness, Ms. Katie Brown, a social worker who had transported 'O' to his school that very morning. The prior day, arrangements were made to have G.S. meet 'O' near the school, this being the first day of school.

[87] Ms. Brown was not available to testify at the start of the day. After hearing from the parties, the Court ruled Ms. Brown could testify after Ms. Blaikie and she did testify.

[88] Ms. Brown expressed the view that G.S. had inappropriately interacted with 'O' after meeting him near the school.

[89] She said G.S. commented negatively about the clothing 'O' was wearing, adjusting his belt region and later saying the clothes were too warm and too big.

[90] Ms. Brown described how she responded to what she viewed as inappropriate communication by G.S. and opined that the child was made uncomfortable by G.S.'s comments.

[91] Ms. Brown impressed the Court as a conscientious social worker. She obviously takes her role very seriously. When faced with what she believed to be inappropriate statements by G.S., she reacted in an assertive manner as one might expect. Given the contrasting view, G.S. and Ms. Brown had of what was being communicated to the child by both G.S. and Ms. Brown, I am satisfied a level of tension was introduced to the events. The child would have undoubtedly sensed that.

- **Evidence of the Respondent G.S. (exhibits 11 & 13)**

[92] G.S. filed two affidavits, on August 26 and August 29, 2019. They are before the Court.

[93] G.S. explained that in 2018 the Applicant became involved in her family because she contacted the IWK about disclosures of a sexual nature made to her by her son. A child protection proceeding followed. The proceeding ended in July 2019 with an agreed statement of facts being concluded. Throughout, her children were in her care.

[94] G.S. describes the special needs of her children. The older child 'O' is described as sometimes difficult to manage, particularly when dealing with transitions. She confirms this child's diagnosis as Autism Spectrum Disorder 'ASD'.

[95] G.S. confirms the diagnosis of her other child as Wolf-Hirschhorn Syndrome following his failure to thrive.

[96] She confirms both children as having been enrolled at Wee Care Daycare which is a developmental daycare that supports special needs children.

[97] G.S. describes having been identified in March 2018 as someone who might have a mental health disorder or a psychiatric disorder. She says her presentation was misunderstood. She in fact is autistic as confirmed in the 2019 report of Melissa Jones and Dr. Shannon Johnson (exhibit 2, exhibit A and exhibit 17).

[98] The Respondent G.S. describes how autism impacts her and how others are often misinterpreting her as a consequence. She characterizes the most recent concerns about her mental health as unfounded and based on assumptions.

[99] She says her state of mental health has not changed in 2019.

[100] She describes her participation in Autism Nova Scotia support events and therapy. She describes the ongoing involvement of other professionals in her life – to assist her children.

[101] In response to Ms. Blaikie's evidence, G.S. says her June 6, 2019 meeting with Ms. Blaikie is an example of the misunderstanding often faced by persons with autism. At paragraph 45, G.S. says "looking away and not engaging in eye contact and not responding in uncomfortable situations are typical responses for her as an autistic person".

[102] She observes that Ms. Power, who visited her home the evening of June 6, 2019 had no concerns to note.

[103] She explained she declined financial support from the Respondent A.M. so he could afford counselling for himself.

[104] She denied knocking on the doors of her neighbours and making the allegations attributed to her by an anonymous caller. She did confirm asking some neighbours to keep a watch out of her apartment.

[105] G.S. explained that the state of her home on July 25, 2019 reflected the fact she had hosted her teenage daughter for a period of three (3) weeks to that point and she had just left. G.S. was also transitioning 'O' to a new bed and this explained the presence of a crib mattress outside her apartment door.

[106] She says there was no barricade or blockage of access to her apartment.

[107] G.S. describes how Ms. Blaikie was told the child was not attending soccer camp and how it was suggested by implication that G.S. was dishonest when she claimed the child was attending soccer camp. In fact, the child was attending soccer camp and was not being 'kept' away from the daycare.

[108] In her August 26, 2019 affidavit, G.S. describes the distressed state of the children on August 6, 2019, this being the first time she saw them following their apprehension on August 2, 2019.

[109] In her August 29, 2019 affidavit, G.S. describes having made efforts to ensure any concerns about clutter in her home were addressed.

[110] In her oral evidence, G.S. provided a very different description of the interaction between her and the child 'O' on September 5, 2019, his first day of school

[111] G.S. explained how she has been taught to assist 'O' to put words to his feelings as a method of improving his communication. A statement to the child, for example, that clothing is too warm is not a critical statement or a negative statement to a child about the child's circumstances, it is a teaching event.

[112] It would appear also that it was a reasonable response to how the child might be feeling. As shown in photos (exhibit 22), the child was wearing flannel clothing on a warm September day. Later the same day, G.S. delivered lighter clothing to the school out of concern that the child was over dressed.

[113] I am satisfied the interaction between G.S. and 'O' was appropriate, loving and caring on her part. The photos taken that day do not support the negative image presented by Ms. Brown. I accept the evidence of G.S. as to the dynamics of the visit with 'O' prior to the start of the first day of school

- **Evidence of Lynn Macdonald (exhibit 10)**

[114] Ms. MacDonald is a social worker employed by the Halifax Centre for Education. She knows the Respondent G.S. and her children 'O' and 'H'. She

has known G.S. since 2000 when both were associated with Phoenix Youth Services.

[115] Ms. MacDonald has attended the home of G.S. in recent years and interacted with her. She has been in her home at least twenty (20) times over the past six (6) years, most recently in May – June 2019

[116] She says the home is cluttered but never unsafe and in her view, never were there circumstances that would warrant child protection concerns. Ms. MacDonald has years of experience as a child protection social worker having worked in that capacity at an earlier time.

[117] She described G.S. as a highly engaged parent.

[118] Ms. MacDonald was very positive about G.S.'s parenting and manner of functioning while acknowledging how G.S.'s presentation can result in G.S. being misunderstood.

[119] She described the initiative G.S. has taken from time to time to support the child 'O' and to carry out recommendations made by the school for his benefit. G.S. has also taken initiatives independent of authorities to assist the child.

- Evidence of Pam MacDonald

[120] Ms. McDonald is employed as a member of the IWK 'EIBI' team tasked with helping the child 'O' learn to live with autism and with the task of helping the child's family. She is a program implementer.

[121] Prior to working at the IWK 'EIBI' program, she was employed at the IWK speech clinic for eight (8) years.

[122] She has been working with the child 'O' since March 2019. She has been in G.S.'s home for several hours most weeks since then. She says there has not been any change in G.S.'s behavior over this period. There has not been anything arising that raises a concern for her about G.S. or her care of the children. In her mind, there have not been any red flags.

[123] She confirmed that the child 'O' has been demonstrating temper tantrums since being taken into care, a development she said is not surprising to her.

[124] She said her only conversation with Ms. Blaikie was in June and she advised Ms. Blaikie she had no concerns about the children being in G.S.'s care.

[125] Ms. MacDonald vouched for the cleanliness of G.S.'s home and volunteered that she used the facilities in G.S.'s home and eats food prepared by her. She added that is not something she can always comfortably do because of the poor state of care of some homes.

[126] She was clear in stating she had an obligation to inform her team if she observed anything in G.S.'s home or her care of the children that would represent a risk to the children.

[127] Ms. MacDonald spoke of the need for the child 'O' to learn how to speak his concerns and to learn to ask.

[128] When asked to comment on Ms. Blaikie's description of an August 8, 2019 visit between G.S. and the child 'O', she endorsed the manner in which G.S. is described as responding to 'O', calling it 'actively ignoring'.

[129] Ms. MacDonald only learned in June 2019 the agency was involved with the family.

- Evidence of Ms. Jones (exhibit 7, 12 & 17)

[130] Ms. Jones was qualified as an expert being a clinical psychologist with a "special expertise in the diagnosis and treatment of mental disorders and the administration of cognitive, mental health and psychoeducational assessments" (exhibit 7).

[131] She co-authored a psychological assessment of G.S. (exhibit 17) with Dr. Shannon Johnson, a registered psychologist. Ms. Jones gave oral evidence over the telephone and filed a supplementary report (exhibit 12).

[132] The psychoeducational assessment, although dated February 2019, reflects disclosure material to and including April 2019. It concludes at page 22 of exhibit 17:

Summary of ASD Assessment

The results of this assessment indicate that G.S. meets criteria for Autism Spectrum Disorder. She demonstrates difficulty with social communication and social interactions that would be expected in ASD. There is also evidence of intense interests, and some adherence to rituals, sensory abnormalities, and repetitive motor movements. Furthermore, based on Ms. MacDonald's report and G.S.'s recollection of herself as a child, the current features of ASD are longstanding. The challenges associated with ASD affect her ability to develop and maintain relationships. It is important to recognize that features of ASD likely impact how others perceive her. Thus, it will be important for those working with her to have an understanding of ASD in adults so that they can provide the necessary accommodations and supports. [emphasis added]

[133] In her oral evidence and supplementary report (exhibit 17) she describes why she modifies her position put forth in the psychoeducational assessment. The basis for that purported revision must be assessed.

[134] For the reasons that follow, I give no weight to Ms. Jones' supplementary conclusions or opinions because the basis for altering her initial opinion is not supported by the evidence. Ms. Jones' revised view assumed certain facts that can not be found on the evidence.

[135] Ms. Jones describes why her opinion of G.S.'s health may now be different,

[136] The concluding paragraph at page 1 of exhibit 12, being Ms. Jones' supplementary report concludes with the following:

The recent documentation forwarded (dated in August 2019) contains reports of G.S. expressing thoughts possibly suggestive of false beliefs largely with a persecutory theme; specifically, regarding fears about people breaking into her apartment. As such, she has reportedly been engaging in associated behaviours, including blocking her front door with objects (e.g., mattress, desk chair, luggage bag, baby gate tied tightly with zip ties and a cord (which reportedly took workers quite some time to open the gate to gain access to her apartment), writing "Not Home" with chalk on the stairs leading up to the apartment, purchasing security cameras, and knocking on neighbours' doors seeking assistance.

[137] The next paragraph of exhibit 12 at the top of page 2 is as follows:

Furthermore, it was reported that G.S. was attending O.'s daycare frequently asking for all notes taken on him, and when told detailed notes were not taken, she did not seem to believe this and believed the information was being withheld from her. Additionally, according to the documentation forwarded it appears G.S. has been having trouble maintaining a kempt apartment, and both G.S. and her children also appeared unkempt at times. Moreover, she was expressing thoughts about noticing items being out of place or moved within her apartment. The documentation forwarded further states that when asked for reasoning behind her fears, G.S. stated that eight years prior, the previous tenant had mentioned that people may enter her apartment. Despite advice from professionals to maintain a clear path out of her residence for safety reasons, it is reported that G.S. continued to leave items blocking entry to her apartment.

[138] I wish to examine some of the 'facts' Ms. Jones believes to have been established.

[139] It is correct that G.S. had anxiety about possible break ins to her apartment (home). That fear is shared by many people and a range of responses are often present. Enlisting neighbours to be vigilant, installing cameras and securing access to one's home are among them. In the case of G.S., it is probable that in dialoging with a neighbor, her mannerisms common to autistic persons but peculiar or unrecognized to many others impacted on what she appeared to be communicating. In addition, G.S. had experience with persons breaking into her home. Her anxiety in this respect may have been heightened but it can not be described as irrational.

[140] G.S.'s contact with the daycare is easily explained. Notes describing the activities of the children were kept there by EIBI staff. It is not surprising that G.S. would want to review these notes.

[141] The interpretation of other observations of G.S. and her home and as described as concerning have lead to an unreasonable conclusion.

[142] I find G.S. did not decide to block her front door with objects as apparently understood by Ms. Jones.

[143] The presence of a crib mattress is easily explained. The crib mattress had been replaced and was temporarily stored outside the door in preparation for garbage day. G.S. did not place the old mattress in a way or with the intention of making access to her apartment door more difficult.

[144] Similarly, a luggage bag was left there when her daughter left after a three (3) week visit. None of the items identified as blocking her door were placed there with the intention of impeding access to the door.

[145] G.S. did say she sometimes used a chair to block the children from leaving the security of the apartment and reaching the outside stairs.

[146] To characterize her securing the gate at the bottom of the stairs after leaving as concerning is to mischaracterize that decision. No person was behind the gate. The secure gate was to prevent people from accessing her home when she was not there.

[147] Purchasing security cameras and asking neighbours to keep a look out are prudent practices.

[148] G.S.'s apartment was messy at times, particularly the kitchen where dishes would pile up. However, some of the dishes piled up were in fact cleaned dishes.

[149] Various professionals were regularly in the home for hours at a time each week and they did not share the opinion of Ms. Blaikie or Ms. Thompson as to the state of G.S.'s home. I accept the opinions of these weekly visitors in this regard. They were present regularly and are subject to a duty to report any concerns about risks to the children.

[150] Similarly, to generalize that the children or G.S. were unkempt, is to put forth an inaccurate description of both G.S. and the children. G.S. responded to this allegation when she testified and I accept her explanation as accurate.

[151] In her supplementary report, Ms. Jones says in the earlier report, G.S.'s "symptoms were thought to be better explained in the context of her ASD diagnosis and past trauma as opposed to a distinct disorder".

[152] The Court concludes that the basis identified for changing that initial diagnosis simply does not exist. The conclusion contained in the psychological assessment remains strongly supported by the co-author of the initial report, Dr. Shannon Johnson.

- **Evidence of Dr. Shannon Johnson (exhibits 8 & 9)**

[153] Dr. Johnson was accepted as an expert in the area of autism.

[154] She confidently rejected the suggestion that G.S.'s behavior could be evidence of a mental health issue. In her view, the general descriptions of recent actions/behavior attributed to G.S. is of behavior one might expect to be exhibited by an autistic person and given her knowledge of G.S., of her in particular. This is not new in the case of G.S.

[155] As between Ms. Jones and Dr. Johnson, the greater expertise in the area of autism rests with Dr. Johnson given their respective educational backgrounds and experience.

[156] The Court is satisfied the Psychological Assessment, exhibit 17, completed jointly by both Ms. Jones and Dr. Johnson remains the best expert evidence available on the issue of G.S.'s psychological profile. I accept its conclusions as continuing to be valid and unchanged.

- **Psychological Assessment (exhibit 17 and exhibit A to exhibit 2)**

[157] The summary of the ASD assessment remains a correct description of G.S.'s reality (exhibit 17 at page 22):

The results of this assessment indicate that G.S. meets criteria for Autism Spectrum Disorder. She demonstrates difficulty with social communication and social interactions that would be expected in ASD. There is also evidence of intense interests, and some adherence to rituals, sensory abnormalities, and repetitive motor movements. Furthermore, based on Ms. MacDonald's report and G.S.'s recollection of herself as a child, the current features of ASD are longstanding. The challenges associated with ASD affect her ability to develop and maintain relationships. It is important to recognize that features of ASD likely impact how others perceive her. Thus, it will be important for those working with her to have an understanding of ASD in adults so that they can provide the necessary accommodations and supports. [emphasis added]

[158] It is important to remind ourselves of the conclusions contained in the psychological assessment. For example:

(1) G.S.'s cognitive processing is superior (page 2).

- (2) G.S. does experience anxiety and it is recommended she monitor her symptoms to avoid a recurrence of symptoms of depression.
- (3) G.S. meets criteria for Autism Spectrum Disorder (page 2).
- (4) G.S. does face challenges in adaptive functioning which for persons with ASD is not unusual (page 2).

[159] G.S. was left with the responsibility to care for herself and her children when the earlier proceeding terminated.

[160] The agreed Statement of Facts herein (exhibit 11, tab b) speaks to that.

[161] In my view, the circumstances and assessments that lead to those conclusions did not change. G.S. was diligently caring for her children, cooperating with service providers and appropriately addressing her health needs when her children were apprehended.

- **Evidence of Dr. Chitty (exhibit 19)**

[162] Dr. Chitty holds a Doctor of Clinical Psychology and is the provincial leader of the EIBI program.

[163] She became available as a witness proximate to the trial.

[164] At some point after she began her evidence, counsel for the Minister challenged her status as an expert witness given she was not formally qualified as an expert. Discussion followed on the effect of s.39(11) of the CFSA and what discretion the Court had to accept the opinion evidence of Dr. Chitty and reference was made to Rule 60A.10(3) concerning the acceptance of expert evidence at the interim hearing stage.

[165] For the purpose of my conclusion herein, I do not need to consider the expert opinion of Dr. Chitty and I do not.

[166] Her evidence however, is significant because of the insight it provides the Court into the operation of the EIBI program and how the child 'O' was being served and the operational impact on the EIBI plan for 'O' resulting from his being taken into care.

[167] Dr. Chitty confirmed the child 'O' came to her attention because of contact with Lynn MacDonald, a social worker with the school system.

[168] Dr. Chitty was also able to testify as to the interactions she had with G.S. and the interaction of her co-workers with G.S. Pam MacDonald reports to Dr. Chitty.

[169] She explained her staff meet with 'O' fifteen hours each week and his case is the subject of discussion by the EIBI team each Wednesday.

[170] Dr. Chitty rejected the negative descriptions of G.S.'s presentation and the suggestion that she was exhibiting evidence of poor mental health. No concerns about the health of G.S. have been communicated to her, nor have concerns about the care of the children by G.S. been communicated to her.

[171] She said she did wonder why she had not been contacted to assist in evaluating concerns of child protection workers.

Conclusion

[172] G.S.'s autism has caused her to exhibit unusual behaviours and this has been a long-standing characteristic of her presentation. As a result of this reality, she has frequently been misunderstood; misjudged and described as "mentally ill" or having some mental health issue. This is not new.

[173] The evidence of Dr. Johnson is that G.S.'s presentation and often unusual behaviours are characteristic of an autistic person and more precisely, known to her as characteristic of G.S.

[174] In June 2019 when the previous child protection proceeding was terminated, it was agreed that G.S. did not pose a risk to the health or safety of her children nor did the children living with her give rise to protection concerns.

[175] No concerns were expressed about her home other than it was cluttered or messy from time to time. It is impossible to conclude that was a daily issue even on the basis of reasonable and probable grounds.

[176] Her children had never been removed from her care until August 2, 2019.

[177] The first proceeding, commenced in March 2018 arose out of G.S.'s preoccupation or heightened anxiety that her son had been sexually assaulted. She persisted with that concern for some time.

[178] The proceeding was directed to conferencing for much of the next year and did not proceed to the protection stage.

[179] The catalyst for the recent involvement of the Minister of Community Services was an anonymous call purportedly reporting G.S. as visiting neighbours and expressing concern about the possible entry of people into her apartment or the risk that this might occur.

[180] Neither the identity of the caller nor the text of the anonymous call is precisely known. I acknowledge that it appears G.S. believes it was a neighbour. It is not even clear what was reported. The evidence of Ms. Blaikie that the police believed the caller said G.S. sought assistance from a neighbour to move garbage bags and at that time, was expressing concerns about persons entering her apartment or the risk of that happening (exhibit 2, paragraph 88(a) and exhibit C to exhibit 2). This report of the 'anonymous call' is to be contrasted with how the call was described at paragraph 86 (of exhibit 2) which makes no mention of G.S. having contacted neighbour(s) to obtain assistance to move some garbage.

[181] In her supplementary report, Ms. Jones makes no reference to the possibility that the principal purpose of contact with the neighbor may have been to request assistance moving garbage.

[182] That difference highlights the risks of relying on anonymous reports and second and third hand hearsay. In my view, reports of this call are not reliable and should not be relied upon to form any conclusions about G.S.'s communication with the neighbour(s). This evidence is not credible and trustworthy in the circumstances (s.39(11)).

[183] I am satisfied G.S. did have anxiety about the possibility of someone entering her apartment. She said she did. I do not accept she visited neighbours as if suffering from a decline in her mental health. Reasonable and probable grounds to support that conclusion are not found on the evidence.

[184] Her concern may have been exaggerated however.

[185] In my view, other circumstances identified by the Minister as corroborative of an irrational concern about her security are not supportive of that conclusion. Alternative and obvious explanations for behaviour of G.S. were not considered. It appears an anonymous phone call coloured the interpretation of other evidence.

[186] The presence of a baby gate secured at the bottom of the stairs leading to G.S.'s apartment was offered as negative evidence of G.S.'s mental health and at other times its presence may have given rise to some safety concerns. As was pointed out by the Court, no one was behind the closed gate seeking to leave. The parties were outside the gate. Locking a gate to prevent persons from accessing the area outside G.S.' apartment on the face of it is prudent.

[187] Similarly, G.S.'s purchasing a security camera appeared to be identified as another link in a series of steps taken by G.S. to satisfy her alleged unreasonable concern about home security. There was no recognition that this is a common security measure employed by many home owners.

[188] A modest pile of sticks were described as a barrier to keep the public/visitors away, although clearly, this could not be a barrier to anyone wishing to get past them. I accept the sticks were placed as G.S. testified, as nothing more than a border for the children when operating their scooters.

[189] The stairs were not 'barricaded' by a mattress as was described. The crib mattress was placed outside the apartment door on the landing at the top of the stairs leading to the landing because a new mattress had been acquired and placed in the home.

[190] G.S. testified the mattress had been outside the apartment for an hour before Ms. Blaikie arrived on July 25, 2019.

[191] As testified by Ms. Power, the passage to the apartment door was not blocked. For a period of time, persons would have to squeeze by items to get to the door. There was no safety risk in my view.

[192] Pam Macdonald and Lynn MacDonald regularly visited G.S.' home and did not observe any concerns or observe anything to suggest G.S. was impeding access to her home. I am satisfied she was not.

[193] G.S. conceded she tied the baby gate and on occasion placed items across the passageway to ensure children did not leave her home and enter the stairs – clearly a risk she viewed as a safety concern should that occur.

[194] G.S. had been diligent for months in meeting the needs of the children to get professional services. No complaints have been made to the contrary.

[195] G.S. hosted 'EIBI' staff in her home each week.

[196] She also took initiatives to ensure she received counselling, particularly for childhood trauma.

[197] G.S. presented as an articulate, highly intelligent and credible parent with a high level of insight and knowledge of autism. She also demonstrated a deep understanding of how to effectively manage her son's autism condition.

[198] I am satisfied G.S. was erroneously characterized as suffering a regression of mental health status. It is clear she was not. The evidence of other witnesses, which I accept, is that her mental health status was unchanged and the behaviour was consistent with ASD diagnosis. The contrary conclusion reflected a lack of understanding and knowledge of G.S.'s ASD and the psychological assessment of G.S.

[199] The conclusion also reflected an unwillingness to consider other explanations of behavior identified as concerning. There was a failure to consider and to be influenced by evidence that was contrary to the Minister's narrative – including evidence gathered by the same office at the same time.

[200] The investigation was flawed. Other professionals who were working with the subject children almost every day and others who were spending hours in the home two days each week and who were well aware of G.S.' level of functioning, mental health and the current circumstances of the children were not consulted.

[201] The principal social worker on the file said she had neither experience with clients who are autistic; or with families managing this condition within a family. She also admitted she did not have any training that would permit her to know how to do so. She clearly did not know how to interpret and how to participate effectively with G.S., a person who has autism. This deficiency is at the core of the explanation for how she responded to the circumstances of G.S. in late July 2019.

[202] Although Ms. Blaikie offered she was frequently at G.S.'s home and was in a position to compare G.S.'s presentation in late July to earlier times, her visits in fact had been infrequent.

[203] Prior to late July 2019, she had been at G.S.'s home three times. The first time was April 4, 2019, soon after she assumed responsibility for the file. At an April 15, 2019 case conference, Ms. Blaikie stated there were no concerns regarding this home. She visited a second time in early June 2019 in preparation for closing the file and a third visit occurred in late June 2019.

[204] On none of those occasions did she inspect the home. Her time in the home was in the kitchen area with G.S.

[205] Ms. Blaikie agreed that G.S. has followed up on each and every recommendation made by Ms. Jones and Dr. Johnson at the conclusion of the then recently completed psychological assessment. She confirmed she was aware of the agreed upon statement of facts at the conclusion of the earlier proceeding.

[206] Ms. Blaikie and Ms. Thompson expressed concern about the state of G.S.'s home. Other witnesses did not view the state of tidiness or clutter in the home as a concern. Their evidence is of a home that is messy. I find the evidence of Ms. Blaikie and Ms. Thompson as over stated and accept the evidence of those witnesses whose evidence was that the home may have been untidy and messy on occasion, but not unsafe or giving rise to protection concerns.

[207] The Minister identifies the following as the basis for its case that the child(ren) are in need of protective services (s.22(2)(b); s.22(2)(e); s.22(2)(f); s.22(2)(g); s.22(2)(h); s.22(2)(i); s.22(2)(j); and s.22(2)(k)[see paragraph 16 supra].

[208] I find the totality of the evidence does not support on a balance of probabilities a finding of reasonable and probable grounds that the child(ren) 'O'

and 'H' are in need of protective services and I dismiss the Minister's application. The children are in the care of the Minister. They shall be returned forthwith to the care of G.S.

ACJ