

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. E.W.*, 2021 NSSC 65

Date: 20210222

Docket: SFHCFSA-115658

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

E.W., D.H., D.W. , R.B.

Respondents

Restriction on Publication: s. 94(1) and 94(2) of Children and Family Services Act

Judge: The Honourable Justice Cindy G. Cormier

Heard: January 19, 20, 21, 2021 in Halifax, Nova Scotia

Counsel: Jean Webb, for the Applicant
EW, self-represented Respondent
Neil Robertson, for DH

The text of the original decision has been corrected according to the attached erratum dated April 22, 2022

Restriction on publication:

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

Subsection 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:

“I don’t know how to love two people at the same time”

[1] The subjects of the proceedings are two children M, age 5, and A, age 2. EW and RB are M’s biological parents. EW and DH are A’s biological parents.

[2] M’s father, RB, has not participated in the proceedings. RB’s mother, WM, M’s paternal grandmother has had informal grandparent access with M.

[3] In January 2019, DW, the children’s maternal grandmother, filed two *Parenting and Support Act* applications, one requesting contact with M, and the other requesting contact with A. DW filed the applications as EW was no longer allowing DW contact with M or A.

[4] In or around February 2019, A's biological father, DH, was served with notice of DW's application for contact with A. Through this notice, served on him when A was approximately nine months old, DH first learned he may be A's biological father. Several months later a paternity test confirmed DH is A's biological father. In August 2019, when A was approximately a year, and two months old, DH filed a *Parenting and Support Act* application, seeking parenting time with A.

[5] The Minister of Community Services – child protection (MCS) became involved with EW before she gave birth to M in November 2015. It was not until August of 2019 that the MCS brought the matter before the court by filing an application under the *Children and Family Services Act*.

[6] Subsequently, the three above-noted *Parenting and Support Act* applications were suspended, allowing the MCS to investigate concerns related to EW's capacity to continue to act as a primary caregiver for the children, and if necessary, to provide services to alleviate any concerns. In August 2019, the children were taken out of EW's primary care, and her custody, and they were placed in the temporary care and custody of the MCS. The MCS initially placed the children in a foster home and then, several weeks later, the children were placed in the care of their maternal grandmother, DW.

[7] The *Children and Family Services Act* matter came to the end of the legislated timeline in mid January 2021. The MCS took the position that the children should not be returned to EW's primary care and EW's parenting time be supervised. The MCS did not oppose M's placement in DW's primary care and custody. In addition, the MCS did not oppose A's placement in DH's primary care and custody. DW was made a party to the *Children and Family Services Act* matter, all applications were consolidated, and a trial was held in January 2021.

Preliminary matters

[8] Throughout the proceeding EW was represented by legal counsel, at trial EW no longer had a lawyer to represent her.

[9] The business records of the MCS were entered as evidence for the truth of their contents, with the consent of all parties. The question of weight is another matter. A trier of fact can except some, none, or all of any evidence, whether *viva voce* or otherwise. The Court is aware that the MCS' staff are directed to enter their notes at about the time of the event, or soon after, increasing reliability.

[10] Contrary to EW's argument, I am not persuaded that the MCS' staff have intentionally misrepresented their involvement with EW, or the information provided to them from referral sources. I am also not persuaded MCS' staff made

decisions with their self interest in mind. I have not found any reliable evidence or any indication at all, that any of the MCS's representatives were acting "naive or doing it for the money", as suggested by EW to one worker in October 2019.

[11] Upon review of the Minister of Community Services' business records, including concerns raised through various referral sources, and including EW's responses to those concerns, I find the referral information to be reliable. The records reflect that the MCS' staff gave EW the benefit of the doubt, and they continued to try to support EW until trial.

[12] I have very little confidence that EW was forthright in providing reliable information to her support persons, or to her service providers to enable them to support her in any concrete way. To the contrary, I find EW often mislead the people who were willing and may have been able to support her. I do not see any evidence that EW has a reasonable level of awareness regarding her own needs or the needs of her children. EW does not appear to have a reasonable expectation, or an adequate understanding of the supports she requires to safely parent M and A.

Initial referral concerns investigated by the MCS

[13] The MCS became involved with EW while she was pregnant with M in 2015.

[14] In August 2015, EW's probation officer, DF, contacted the MCS about EW's pregnancy. He expressed concern about past intimate partner violence between EW and RB and their ongoing conflict while EW was pregnant with M.

[15] DF advised the MCS that EW and RB had a tumultuous relationship, with a rating of 8 on the "Odera scale". DF reported a then recent alleged incident where RB had allegedly "pushed EW and punched her on the side of the head". He reported that EW had identified RB as her unborn child's, M's father.

[16] Several weeks later, DF contacted the MCS with an update regarding EW's circumstances. He advised that EW had been scheduled to attend Mental Health Court in February 2016, but that it was later determined EW did "not qualify for treatment through the Mental Health Court as she did not have an "axis 1 diagnosis".

[17] DF reported that EW had been charged with "assaulting RB, shoplifting, and possession" and EW had "an upcoming trial in March 2016, for an offence last November 2014, assaulting a police officer". DF reported that as of October 2015, EW had "one conviction, and 4 pending matters." I have no reason to doubt EW's probation officer's report to the MCS.

[18] Dr. W, a doctor who was apparently familiar with EW, indicated she was "extremely concerned" about EW's unborn baby. She advised that based on her

observations and her interactions with EW, she had concluded that EW wanted to be independent.

[19] It was Dr. W's opinion, that EW would resist getting help. Dr. W stated that EW, "often made excuses and lies to herself" and described EW as "very needy", "full of anxiety", and as not having the ability to understand fully, stating "her logic is off".

[20] Dr. W suggested EW needed a complete mental health assessment to identify her needs but EW did not wish to complete one. She described EW as "highly anxious" and expressed concern about EW caring for a baby. Dr. W expressed the opinion that EW "was not fit to care for someone else".

[21] The Newfoundland child protection authorities shared with the MCS various concerns they had about EW as a youth. The authorities in Newfoundland reported they became involved with EW as a teenager after her placement with her father, RW, broke down. They reported that RW had alleged EW was violent toward him. They further reported EW had advised authorities that her father had left the family when she was a baby and she lived with her mother, DW, "in a crack house," until she moved in with her father when she was approximately twelve years old.

[22] The authorities in Newfoundland queried concerns about EW's possible diagnoses of Attention Deficit Hyperactivity Disorder (ADHD), Oppositional Defiant Disorder (ODD), Bi-polar Disorder, and a possible learning disability. Specifically, authorities reported they observed past concerns such as EW's "reported early drug use, her negative attention seeking behaviour, her poor problem solving skills, bonding issues, concerns with lying, theft, running".

[23] They also reported past concerns regarding EW's "difficulty in the school system, her difficulty with self regulation, with oppositional behaviour, with verbal outbursts, with violent behaviour, with poor lifestyle choices, and with poor choices of partners, with multiple brief relationships with men, some physically abusive". They observed that in the past EW tended to "place herself in unsafe situations to obtain desired items".

[24] They advised they also had concerns about DW's and RW's past ability to provide a healthy home environment for EW, including consistency and protection from harm. I have no reason to doubt that the authorities in Newfoundland were concerned about EW's past history. EW's past history before she had children is relevant but not determinative. The court has an obligation to determine EW's current level of functioning as a mother to M and A.

[25] When putting her mother, DW, forward as a support for her and for M, EW advised the MCS that as a youth she had “lied a lot to the system because she did not want to return to her mother’s home.” EW explained that as a youth “she didn’t want to be anywhere”. EW stated that the conflict between she and her mother, DW began after her aunt died in October 2007. EW acknowledged she acted out doing “what she wanted to do” and her mother could not handle her. EW confirmed she had spent years in residential schools and that at that time she liked it because she could do whatever she liked.

[26] EW refused to provide her consent for the MCS to obtain information from the St. Charles Hospital regarding her past mental health history. EW initially refused to provide her consent for the MCS to obtain information from police in Newfoundland but later provided her consent. EW disclosed an incident when she had attended the hospitals’ (presumably St. Charles’ hospital’s), emergency room “with cramps”. She stated that after waiting for four hours she became angry and she left a note at the hospital stating “you will pay for this”.

[27] EW provided her consent for the MCS to speak with the Halifax Regional Police regarding her missing persons report. She acknowledged that in the past she was in a bad relationship with “E” and she lived with him for a period while refusing

to return home. DW described the man EW had lived with during that period as an “older”, man.

[28] Upon receiving the above noted referral information the MCS strongly advised EW attend mental health services to ensure she had the necessary supports in place to address all her needs prior to the birth of her child. In October 2015, EW indicated she had been referred to community mental health services and she was on a waiting list.

[29] EW later denied she had a mental health diagnosis, and explained, “it was possibly due to previous drug use”. EW indicated she would talk to Dr. B about her feelings and she was interested in seeing a psychologist.

[30] When presenting her plan for her unborn child to the MCS, EW described her mother, DW, as a support to her. EW took the position that her mother’s medical health issues would not impact on her mother’s ability to support her or her mother’s ability to care for the baby. DW confirmed she was prepared to support EW and that her health issues would not interfere with supporting EW with her baby.

[31] DW reported that EW was living in the “ensuite” attached to DW’s home. DW advised she was encouraging EW to enroll in a program at the NSCC to complete her high school education. DW indicated she would assist EW financially

and she would support EW's needs. DW explained that due to past concerns she would maintain appropriate boundaries with EW and that EW would have limited access to the main part of DW's home.

[32] DW denied past allegations made by EW about DW to the authorities in Newfoundland. DW reported that EW's father, RW, was diagnosed with schizophrenia and he was not compliant with his treatment. DW described RW as "irrational and impossible to deal with."

[33] RW did not testify at trial, and I do not have any independent confirmation of his reported diagnosis. Given DW's concerns about RW one does wonder why DW sent EW to live with him. DW also reported that RW's two sisters were diagnosed with Bipolar Disorder. EW's paternal aunts did not testify at trial and I have no independent confirmation of their reported diagnosis.

[34] DW observed that EW's anxiety had lessened somewhat and at that time she had no concerns about EW's ability to parent. DW was asked by the MCS and she agreed she would report any concerns about EW's care of M to the MCS and she would intervene to assist if necessary.

[35] The MCS received independent confirmation that EW had attended pre-natal classes and she was connected with a public health nurse prior to M's birth. EW

was encouraged to attend a “post baby program, related to post partum adjustment, and depression, baby cues, and baby development. EW would later report she was not accepted into the program.

[36] M was born on November [...], 2015. EW was twenty years old at that time. Staff observed that DW, and EW’s grandmother CCS were present for M’s delivery. They also observed EW and DW had “a few spats” while DW was visiting EW at the hospital.

[37] The MCS held a risk management conference on November 10, 2015, and found risk of harm was substantiated pursuant to section 22(2)(b) of the *Children and Family Services Act*. The MCS identified the following concerns regarding EW: a history of intimate family violence, EW’s anxiety and mental health, EW’s poor lifestyle choices, EW’s extensive history with child protection services, EW’s admissions about making poor decisions, and her admissions about putting herself at risk prior to her pregnancy, EW’s past history of substance abuse, EW’s history of transiency, and her history of instability.

[38] On the other hand, the MCS determined that EW had secured appropriate housing, she was engaged in services, she was taking advantage of supports, including meeting with her family physician and attending prenatal classes. EW’s

interactions with M in hospital did not raise concerns. EW identified DW as a support and DW confirmed she was willing to support EW. There was no indication of further substance abuse by EW and EW was no longer in an abusive relationship with RB.

[39] The MCS substantiated substantial risk of physical harm and that long term protective services, including ongoing assessment, should be put in place for EW. With EW's input, the MCS determined DW was a support for EW and for M. The MCS communicated their expectation regarding restrictions on RB's contact with M, their expectation regarding EW's living arrangement, their expectation regarding DW's continued support of EW, and their expectation that EW would attend ongoing services such as counseling and she would remain involved with public health services, including involvement with an enhanced home visiting program.

[40] After M's birth EW disclosed that she had experienced significant anxiety while pregnant with M and that she was taking Clonazepam. EW acknowledged taking "a lot of drugs about two years ago" but stated she was a "stupid kid" then and was not addicted.

Ongoing concerns regarding EW, and long term services directed at EW

[41] In February 2016, the MCS arranged for EW to have the support of a family support worker. EW requested assistance from the family support worker to move out of DW's "ensuite" which was attached to DW's home. EW indicated she was experiencing stress living with her mother and her brother. EW alleged there was "significant fighting" in her mother's home and she was worried about any potential impact on M.

[42] EW advised the family support worker that she had ongoing support from her grandmother and friends. EW was asked to refer herself to the Reproductive Mental Health program. In March 2016, EW advised "she was not accepted to the Reproductive Mental Health program".

[43] DW contacted the MCS to express concerns about EW's mental health. She observed that EW had struggled in the past and EW continued to struggle with interpersonal relationships. DW advised that EW was not being honest with her service providers and she would not improve. DW observed that EW "is easily agitated, is anxious, and has excessive mood swings". DW alleged that EW "screams at the people in her life".

[44] DW advised that Dr. B, EW's doctor, had completed an assessment of EW and had diagnosed EW with Borderline Personality Disorder when EW was six

months pregnant with M. DW alleged that EW did not seek help as she was concerned her baby would be taken away. Dr. B's assessment was not filed with the court.

[45] EW reported to the MCS that she had missed her criminal court appearance on March 2, 2016 and she was placed in the court's holding cells. EW confirmed she contacted DW to provide support to her by caring for M while she was in cells.

[46] In May 2016, EW reported her mother was videotaping their contact and threatening to contact child protection services to report concerns about EW's parenting. EW subsequently moved out of DW's "ensuite" and into her own apartment with M.

[47] On May 20, 2016, a representative of the MCS observed EW's home was "clean and appropriate". EW reported she was still involved with the Community Home Visitor program offered through public health services.

[48] On May 26, 2016, and on June 15, 2016, the family support worker assigned to work with EW expressed concern that EW was not finished unpacking her belongings and EW had not yet followed the family support worker's suggestion to safety proof the house before M became mobile.

[49] In August 2016, EW's involvement with the MCS was reviewed. Family support involvement had come to an end and the MCS made a decision to close EW's file with the MCS.

Intimate partner violence involving EW

[50] EW has a history of aggressive behaviour as a youth in Newfoundland. EW was charged with assaulting RB in 2015. Later EW declared that RB was not M's father and he had left the jurisdiction. In March 2016, EW was scheduled to appear in court in relation to an incident alleged to have occurred in 2004 for assaulting a police officer.

[51] In July 2016, C, a counselor at Alice Housing reported that it was "difficult to assess" EW's progress in gaining awareness of issues related to intimate family violence. C advised that EW had only attended three or four appointments between April 11, 2016, and July 11, 2016, and that EW brought M to the sessions with her. I have no reason to doubt the counselors' report.

[52] In January 2017, the MCS received a report EW had assaulted DH and that M was present during the incident.

[53] In February 2017, concerns were raised about EW having ongoing contact with DH in M's presence. The concern could not be substantiated but concerns were raised about EW's response, stating she was just airing the room out when workers observed her bedroom window was wide open, the screen had been removed from the window and the workers could observe footprints outside EW's window.

[54] At the end of September 2017 the MCS was alerted to another incident of intimate family violence between EW and DH. DH was charged with assaulting EW. EW had videotaped the assault and M was not present during this incident. DH was placed on probation and he completed a Healthy Relationships program.

EW's ongoing difficulty with interpersonal relationships

[55] As noted previously, the MCS became involved with EW in 2015, due to the relationship between EW and RB. In 2015, EW was charged with assaulting RB, and she also had a trial scheduled in March 2016, following an incident in 2014, when EW was charged with assaulting a police officer.

[56] In January 2017, after EW was charged with assaulting DH, DW expressed that her relationship with EW continued to be quite challenging. DW expressed being grateful EW would be working with the MCS and DW indicated she would be

willing to attend family counseling with EW but only if EW got the help she needed, and was honest with herself.

[57] In July 2017, a staff person from Dr. B's office, N, contacted the MCS's office to report that EW had been discharged from Dr. B's medical practice. N reported EW had been yelling in Dr. B's office while there was a "waiting room full of people" and that EW had opened a door where Dr. B was meeting with another patient. N reported that DW had contacted the doctor's office to support EW's request for medication for pain due to cramping.

[58] In November 2018, DW reported an incident where EW began screaming and yelling because DW had permitted EW's brother to take M to the market. DW advised that it was not unusual for EW to become verbally escalated.

[59] There is information to suggest EW had a falling out with one of her brothers after she alleged he "anally raped her" when she was four years old. If this was the same brother and I believe it was, I wonder why DW would have permitted M to go with EW's brother while knowing the history between EW, and J.

[60] EW subsequently contacted the MCS to express concern about DW. She reported that DW had asked her if M had met her "other grandmother". EW's concern suggests to me that EW may have been worried DW would report to the

MCS that RB was M's father. EW acknowledged that M enjoyed her time with DW but reported she was struggling in her relationship with DW who was threatening to report her to the MCS.

[61] In November 2018, when EW was limiting DW's contact with M to shorter periods of time, DW took M to a dance lesson. DW did not return M home immediately after her dance lesson as directed by EW but took M to her home to get her changed. DW then contacted the MCS to report that she had observed a "huge welt" on M's buttocks.

[62] DW reported to the MCS that when she asked M what happened, M stated "mommy was mad at her and smacked her bum". The marks on M were not seen by a doctor, but they were observed by a representative of the MCS who thought the marks were a form of rash and not suspicious.

[63] Subsequently, when DW dropped M off to EW she was recording the event. EW became angry at DW for recording her and she lunged for DW's telephone, scratching DW in the process. Police were involved but no charges were laid. EW agreed with the MCS that it was not in the children's best interests for her to have contact with DW in the children's presence. The MCS suggested they arrange a third party to facilitate the children's contact with DW.

[64] In December 2018, EW advised she would be seeking a restraining order against DW. A representative of the MCS spoke with M. M stated she felt safe with EW but that DW was “bad”. When asked why DW was “bad” M stated DW was bad “because EW said so”.

[65] In December 2018, the MCS concluded that EW and DW were involved in “ongoing custody, and access issues” related to M and A. Subsequently, in January 2019, DW filed two court applications for grandparent access with the children.

[66] In August 2019, the MCS received reports that while EW was at the hospital seeking treatment she presented as difficult and argumentative with hospital staff. DW reportedly intervened by contacting hospital staff by telephone and then returning from her cottage in New Brunswick to support EW. DW assured staff that EW was not “drug seeking”. EW’s godmother, BB, RB’s mother, MW, and EW’s mother, DW, attended at the hospital in an effort to assist and support EW and the children.

[67] EW arranged for RB’s mother, MW, and not her mother, DW, to take the children while she was in hospital. MW, DW, and EW’s godmother BB, discussed how to best support M and A. DW acknowledged EW would not want the children

to stay with her but DW agreed to drop off a baby item to MW to assist MW care for the girls.

[68] DW was leaving MW's home, after dropping the baby item off and after seeing the girls, when EW arrived to pick the girls up. EW became upset with DW, MW, and her partner D, because DW had contact with the children when she was not permitted to have contact.

[69] Some days later representatives of the MCS attended at EW's home and determined her home was not suitable for the children and that EW presented as highly anxious and difficult to deal with. EW's godmother, BB, agreed to allow EW and the children to stay with her that weekend. However, that weekend BB found it necessary to contact the after hours emergency duty workers regarding an incident reported by DW when DW attended at BB's house to pick up a list from BB. DW had stated that M noticed DW in the driveway and when M wanted to see DW, EW became upset. In addition, BB reported concerns about the care EW provided for the children while they resided in her home for the weekend.

[70] In March 2020, EW accused her mother, DW, of taking advantage of her situation when she was in the hospital. Reporting DW "made a move" to have her

children removed from her care. EW stated that she had tried to get along with DW since M's birth but DW's "expectations were just too unreasonable".

[71] In lieu of recognizing the issues identified by the MCS, including her failure to maintain adequate housing, the condition of her home, and her failure to access adequate mental health services since 2015, EW identified DW was "making a move".

EW ability to maintain a home for herself and the children

[72] At the end of October 2017, EW reported to the MCS that she had been given an eviction notice with direction to vacate her apartment within a few weeks. EW later indicated she had found an apartment, and that she and the children could move in as of December 1, 2017.

[73] In response to the issue of EW being evicted DW reported that EW "squandered" her money and she was "evicted from the Regent Drive apartment, for failing to pay her rent for five months". DW reported that when she found out about EW's circumstances EW stated "oh well, you're going to have to help me because I'm pregnant."

[74] DW claimed she “secured a new apartment for EW, she paid EW’s damage deposit, she paid EW’s first months’ rent, she helped EW move, and she connected the power in her own (DW’s) name. DW further reported that seven months later EW refused to pay her power bill with \$1600 owing. DW advised she paid EW’s outstanding \$1600 power bill “out of her own pocket” and then reconnected the power bill in EW’s name.

[75] On August 19, 2019, the MCS received an anonymous referral indicating EW’s home was not suitable for children and questioning EW’s ability to provide for her children’s basic needs. The MCS investigated and determined EW had been without power for up to a month and EW appeared to be having difficulty managing her mental health.

[76] MW reported to the MCS that she had observed EW did not have power in her home and that EW had used candles throughout her apartment without anything under them. MW indicated she had observed that the candles were burned down and did not have any flame resistant material under them. MW also reported she had observed dirt and old food in the residence.

Parenting concerns regarding DH

[77] In January 2020, DW advised she had no concerns about DH having unsupervised access with A. She stated that she did not believe DH would harm A.

[78] DH confirmed he had completed a twelve week program dealing with intimate partner violence while he was on probation. He agreed he would be willing to attend the New Start program but noted that he had already completed a Healthy Relationships program.

[79] On March 9, 2020, ER, a therapist with NEW Start, confirmed DH had attended two appointments and he was scheduled to meet with him that day. ER observed that DH appeared motivated during their sessions. Shortly thereafter, in-person appointments were no longer occurring. DH was offered video sessions but declined due to privacy concerns in his home. Although ER reported he did reach out when in person sessions resumed DH did not resume sessions.

[80] No concerns were noted by access facilitators during DH's parenting time with A.

[81] In February 2020, EW alleged DH's father had raped his sister. EW had also previously suggested DH was sexually abused.

[82] In March 2020, DW began facilitating DH's supervised parenting time through video conferencing. DW noted no concerns with DH during his parenting time.

[83] In April 2020, DW advised that the video calls with DH and A were going very well and that there was "pure cooperation" by DH. DW indicated that DH had mentioned swimming lessons for A and that DH speaks about A's future. DW indicated that DH speaks very positively about A and that A had seen her brother, M, DH's son, during video calls.

[84] On July 9, 2020, the MCS plan was to re-start DH's in person visits with A.

[85] On July 14, 2020, a representative of the MCS visited DH's home and did not observe any concerns. DH agreed to resume his counseling sessions at NEW Start but later failed to do so.

[86] On November 17, 2020, LC visited DH's home and advised him that the Minister of Community Services would be increasing his parenting time and would be asking DW to provide transportation for A rather than a case aide. DH confirmed he would be seeking primary care of A. LC advised that the Minister of Community Services would "likely take no position in the custody arrangement, as we have no concerns". DH indicated he had primary care of his son M and that it would be good

for A and his son, M, to be together. No concerns were noted about DH's failure to attend the New Start program.

[87] On November 26, 2020, a decision was made to expand DH's parenting time to every second weekend. On December 8, 2020, DH was advised regarding his expanded parenting time. Again, no concerns were noted about DH's failure to attend the New Start program.

Parenting concerns regarding DW

[88] Given EW's presentation as a youth and her past history in care in Newfoundland concerns have been raised about DW's ability to parent an adolescent with special needs such as those EW presented with. Of note is that M presents with challenging behaviours, including aggressiveness, as a five year old.

[89] Among other complaints expressed by EW about DW's parenting, EW has alleged DW allowed EW to be "anally raped by her brother, when she was four years old." EW has questioned DW's ability to properly supervise M and A.

[90] In May 2018, A was born. IWK staff reported a verbal altercation between DW and IWK staff when M was present. They reported feeling concerned about

DW's presentation, contacting security, and directing security to ensure DW left the hospital.

[91] In November 2019, EW raised a concern about DW failing to help her stay connected with the children. EW claimed she had dropped off a backpack with beach rocks, pencils, and a bracelet on DW's back deck for the children, and then ran back to her co-worker's car. EW expressed feeling frustrated that DW left the backpack EW had dropped off on her deck with gifts for the girls and DW alleged EW had dropped off a bag of rocks.

[92] In December 2019, DW reported M was acting out by hitting people and that the children's uncle, J, was spending time with the children at her house.

[93] On October 21, 2020, LC advised DW that EW's parenting time with the children would be moving to partially supervised visits. DW suggested M was an anxious child and M needed to be prepared in advance for changes. LC advised DW that EW was doing "really, really, well". DW expressed concern about M returning to EW's care and stated she was concerned M would develop self-harming behaviours.

[94] EW reported that when her brother J and his girlfriend were living with DW that DW was physically abusive to them. EW alleged that when DW "takes her

sleeping pills she becomes a raging bitch if you wake her up”. EW advised that DW contacted the police “multiple times” “over weird shit”. EW explained that she was struggling financially and was in a “much better situation” when the children were living with her.

[95] DW stated that her son J and his girlfriend had moved in with her some time ago and when she asked them to leave her son’s girlfriend claimed they had “squatter’s rights”. DW indicated the police were called and they left her home but she is “J’s target” when he is using and he becomes aggressive. DW stated that J and his girlfriend “hate her now”.

[96] On November 10, 2020, DW expressed concern about her son J who she believed had reconnected with EW. DW explained that J had previously “cut” EW off as EW had made allegations that J had “sexually molested her” throughout her childhood. DW reported that J is a “recovering addict in active use more often than not”. Explaining that J is an IV narcotic user. DW indicated that J served thirty six months in a Federal prison and had been on the methadone program.

[97] DW also reported that J is a COVID “denier”. She indicated J was requesting overnight visits with M and A. DW advised that on M’s birthday J had arrived unannounced and “tried to start” a “huge confrontation” as he was upset that he was

not invited to the party. DW alleged that J and his partner were yelling. DW requested direction from the MCS with regard to J's request for overnight visits with the children.

[98] Based on available information, it appears that at times DW has not done all she could to encourage M and EW's relationship. In addition, it appears there is potential for significant conflict at DW's home.

Parenting concerns regarding EW

[99] In 2018, when EW was asked if she physically disciplines the children, she stated that she would only "tap" M's behind and only in "dire" situations. For instance when M was rough with A, and EW was afraid M would hurt A.

[100] The disclosure from EW that M was acting aggressively toward A while the children were living with EW contradicts EW's claims that M started acting out aggressively after she was taken out of EW's care.

[101] While observing EW and her children in 2018 a representative of the MCS observed M lunge toward A. EW also reported an incident when M bit A and EW had spanked M as a form of discipline. Although the MCS found they were not able

to substantiate the allegation of physical abuse, I find it is more likely than not that based on M's presenting behavior EW was using inappropriate discipline with M.

[102] In March 2019, a pharmacy manager reported that EW had left M unsupervised for approximately 15 minutes while she was with the children at the pharmacy. EW dismissed the report as malicious.

[103] In March 2019, a representative of the Minister of Community Services observed M was a "little" rough with A. M was putting her face into A somewhat harshly and making A cry.

[104] EW and the children stayed at EW's godmother's home, BB's, one weekend in August 2019, before the children were taken into the care of the MCS. BB observed that EW failed to properly supervise A when A was eating, when A was seated on an elevated surface, and when A was able to get hold of EW's cannabis.

[105] BB also observed EW had inappropriate expectations of M (asking M to feed A, as she claimed she was too stressed). BB reported that EW did not have any awareness of the concerns related to her parenting of the children and EW was "rambling non-stop that workers were against her and nobody is telling the truth". BB advised that EW told her they had to "plan what they were going to tell the workers on Monday". BB also reported concerns about EW's home, observed the

previous week, including food on the wall covered in mold, moldy food in the bedroom, and “weed” on the table.

[106] EW acknowledged she had left “cannabis” within A’s reach, and although she suggested she stopped using cannabis following this incident, EW subsequently confirmed she was still using cannabis.

[107] KB reported she had visited BB’s home and observed EW react inappropriately to M’s aggressive behaviour directed toward KB’s child. KB also indicated she had observed EW walking with A and believed EW was shaking A too hard while apparently trying to soothe her and A continued crying. KB believed EW was too rough with A. EW denied being rough with A.

[108] On September 19, 2019, M disclosed that EW “hits her on the bum when she is mad...and it sometimes hurts”. EW later acknowledged she had “spanked” M in the past but stated she had stopped using spanking as a form of discipline after the issue was first raised by the MCS.

[109] On September 23, 2019, EW was observed during a supervised access visit with the children. The case aide reported EW used “a fair amount of cursing, and catching herself” and that EW told the girls “her brother is a rapist”. The access supervisor observed that EW appeared to have trouble supervising both children at

once. She observed A almost fell off a couch while EW was sitting on the other side of a table playing with M. EW acknowledged telling the case aide that M and A's uncle was "a rapist" explaining that she did not say it directly to M but was talking to the case aide.

[110] In January 2020, EW expressed concern about M's aggressive behaviour during her supervised access time with the children. EW advised that M was yelling and hitting during the access visits. EW was advised that M was seeing a child psychiatrist and was likely too young to understand her emotions. A decision was made to offer EW the services of a family skills worker to help EW re-direct M's behaviour. EW stated that the supervised access visits were too short to re-direct M's behaviour.

[111] On February 10, 2020, the access facilitator observed that EW was struggling to supervise both children during supervised access and EW was struggling to say no to M.

[112] On March 4, 2020, the MCS was prepared to allow EW to have her supervised access visits in the community but with only one child at a time. The MCS representative observed that EW did not show any insight regarding the MCS concerns about her inability to supervise both children at once.

[113] On March 9, 2020, a case aide, reported that EW had to be directed not to make negative comments about DW.

[114] When lockdown began in response to Covid 19 in person access visits were suspended and EW had contact with the children via video conferencing. EW had various concerns about DW facilitating the video calls and on March 26, 2020, a decision was made to have a case aide supervise the virtual access visits.

[115] The MCS reported continued challenges with the supervised video conference access visits due to the children's ages and due to EW's reluctance to have DW involved.

[116] On April 15, 2020, a case aide reported concerns about M not wanting to participate and M's behaviour being "off" as a result. The case aide observed that DH was attempting to be helpful but when M continued to be reluctant to participate EW commented that "she was sure it would make DW happy if they ended the visit". The case aide observed that DW was "trying her best in all situations" and that EW was "very critical" of DW. EW later alleged that the case aide was making false accusations.

[117] On April 20, 2020, a case aide reported that at the end of an access visit EW began talking to the children about returning to live with her and the case aide had

difficulty redirecting EW. The case aide noted that EW alleged DW was “snickering” but the case aide stated that “did not happen”. A decision was made to suspend EW’s video calls if there were any further concerns. The issues were discussed with EW. EW suggested the case aides were “putting in false complaints”.

[118] In early June the MCS observed that EW’s access had gone well throughout May 2020.

[119] However, on June 3, 2020, DW contacted the MCS to report that EW had commented about DW’s behaviour during a video conference and M had responded by stating “you’re wrong mommy”. A decision was made to suspend EW’s access until June 10, 2020. When the issue was discussed with EW she took responsibility for her actions.

[120] Later in June, 2020, DW reported that EW continued to make “digs at her” during access calls and that M has made comments such as “mommy’s not listening”. DW was encouraged to be positive about EW with the children.

[121] On June 26, 2020, DW reported that the video calls were “much better” after they had arranged for the girls to meet separately with EW.

[122] On July 2, 2020, M stated that her visits with her mother were perfect.

[123] On July 20, 2020, the family support worker advised EW she needed to be consistent when disciplining the children. EW responded by saying that she was trying to keep the visits as positive as possible because M was making comments such as “you’re a mean mother”. EW indicated she did not want to upset M. The family support worker reviewed positive discipline strategies with EW.

[124] The family support worker attended multiple access visits, and on a number of occasions she reported that EW was appropriate, attentive, and consistent with the children, but that despite EW’s efforts:

1. On August 6, M stated that EW being “mean”, and M was observed hitting EW for attention, and pushing A down several times.
2. On August 20, 2020, M stated that she did not want to live with EW, and M pushed her sister, and hit her mother.
3. On September, 2, 2020, M stated that “her mommy wasn’t nice because she wouldn’t let her see meemaw (DW), for a lot of days”, and that she “wants to live with her meemaw, and she has to practice what to tell everybody”. M was observed pushing A down.

[125] On September 10, 2020, a case aide reported that before EW arrived M had struck A “on multiple occasions”. The case aide observed that when EW was present

M's behaviour continued to worsen (throwing, not listening, dipping blueberries and other food into her ketchup, and mixing it all together to make a mess). The case aide noted that EW did not step in right away and that she threatened a time out on multiple occasions but did not follow through when M's behaviour did not improve.

[126] The case aide observed that M yelled at A pushed A and then held A against a wall. EW did not react right way and the case aide walked across the room to separate the children. When the case aide ended the visit M began to cry; EW cuddled her and she blamed DW.

[127] On September 23, 2020, the family support worker observed that EW had been "engaged and attentive" during the more recent supervised access visits she had attended, and that EW had been appropriate when responding to comments made by M about DW. She noted that EW did not speak negatively about DW.

[128] On September 29, 2020, the family support worker met with EW and supervised a parenting visit. SM observed that M displayed "some challenging behaviours" and that EW "did a good job responding appropriately". She observed that "M was mean to A throughout the visit and EW put her in time outs consistently".

[129] The family support worker also observed that M said things to her mother in an attempt to get a reaction from EW and that she “observed M to be angry, defiant, and attention seeking. Observing that M stated that her mother was “mean because she kept M from seeing her meemaw when she was a baby”.

[130] On October 13, 2020, SM met with EW and observed her parenting time with M and A. SM observed that M was “mean to A and she was doing things like pushing A down and not giving A turns on the slide”. SM observed that M was “difficult to redirect” and that EW “attempted to address her behaviours with conversation and then time outs”. SM observed that “M remained defiant throughout the visit”.

[131] SM observed that A was a “mild mannered girl who is constantly being mistreated by her sister”. SM indicated that she “reminded EW that it was her job to protect A from M when the situation calls for it” and suggested EW “be extra diligent when supervising the girls.

[132] On December 2, 2020, a concern was raised about EW’s parenting time with the children the previous day. MS observed that EW had requested a later visit to accommodate her schedule but when the children arrived EW did not prepare a meal in a timely way. MS also observed that M was mean to EW, hiding behind a door

to then slam it on EW, and EW would put M in time out but not follow through. MS observed that although the visit was scheduled to end at 6:15 that EW would not stop hugging and kissing the girls and going back to tell them other things and the visit only ended at 6:45.

Services, programs, or supports for EW

[133] In March 2017, EW reported that she was registered to start an educational program in the Spring.

[134] EW advised she had contacted community mental health but they advised she needed a referral from her family doctor. EW agreed ask her family doctor to make a referral.

[135] The MCS had difficulty meeting with EW throughout May and June 2017.

[136] On June 14, 2017, EW reported that mental health services had “turned her down as they were overloaded”. The MCS offered to contract with a mental health professional on E’s behalf but she did not accept the offer.

[137] In June 2017, Dr. B indicated she had no concerns about EW. Dr. B advised she was open to EW making an appointment with her to discuss why she may need a referral for mental health services.

[138] In July 2017, EW agreed to make an appointment with her doctor to request a referral to mental health services.

[139] In July 2017, Dr. B discharged EW from her medical practice as EW behaved inappropriately in her office. EW was reportedly yelling and screaming and then entered an office where Dr. B was meeting with another patient.

[140] N reported that EW was requesting medication for “cramping” and when Dr. B would not provide a prescription EW became upset. N also observed that EW’s mother, DW, contacted the office demanding to speak with Dr. F (Dr. B’s previous name).

[141] EW acknowledged she had not been “very pleasant” with staff at Dr. B’s office as they appeared to be suggesting she was “drug seeking”. EW explained that she’d had surgery when she was twelve years old and as a result she was in severe pain. She stated she had been requesting a referral to a gynecologist for two years. DW reportedly confirmed EW’s information.

[142] In August 2017, EW stated that she was still attempting to find a new family doctor.

[143] In November 2017, EW reported that she had not yet obtained a referral for mental health services.

[144] In December 2017, EW reported she had taken time off school due to stress.

[145] In March 2018, EW reported that she had forgotten to ask for a referral to mental health services at the end of February but she would ask at the end of March 2018.

[146] In April 2018, EW reported that she had arranged for a referral for mental health services but indicated she did not understand why the MCS was requesting she attend mental health services.

[147] EW stated that she understood the MCS' concern was about exposing M to intimate partner violence. The MCS representative advised that support and counseling would help EW develop tools to manage her emotional reactivity.

[148] In June 2018, EW reported that her referral to community mental health services had been denied. It is unclear why the referral would be denied unless EW was not accurately reporting the history of concerns communicated with the MCS.

[149] In August 2019, EW acknowledged she was smoking "weed" at night to help her relax and she suggested she was receiving support from Dr. HS at the Dartmouth General Hospital.

[150] In early October 2019, a representative of the MCS spoke with EW once again about the MCS's concerns about her mental health.

[151] On October 14, 2019, EW's Psychiatric Assessment Report, prepared by Dr. MP, MD, FRCPC, was completed. Some of the history provided by EW to Dr. MP and included in her Report, appeared to be allegations about DW that EW had previously recanted.

[152] Dr. P's recommendations for EW included the following:

1. work with a Trauma and Attachment specialist to address attachment style. Dialectical Behavioral Therapy (DBT) is indicated to treat Borderline Personality Disorder and would help her to control impulses and regulate her emotions.
2. In order to address her emotional dysregulation and irritability, initiation of a mood stabilizer, Lamotrigine, would be appropriate. Dr. P then made further recommendations regarding medication she suggested would assist EW.
3. Treatment of ADHD symptoms has to be initiated after EW is stabilized on Lamotrigine. Dr. P recommends starting EW on ...long

acting psycho-stimulants, either Concerta, Vyvanse, or Biphentin and then providing recommendations regarding doses.

[153] In October 2019, EW advised she was seeing a therapist to deal with the trauma from her past. EW indicated she would be meeting with her family doctor to discuss the medication recommended by Dr. P, but she did not want to take any anti-psychotic medication.

[154] EW did not provide the MCS with consent to provide a copy of the report to EW's doctor or to her therapist.

[155] In November 2019, EW's file was once again opened for long term services with the MCS. The MCS's plan was to ensure EW followed the recommendations included in Dr. P's Report, including ensuring EW self referred to community mental health services for participation in the Dialectical Behavioural Therapy Program.

[156] In early January 2020, EW provided her consent to allow the MCS to provide a copy of the Psychological Assessment Report to Belmont House. Some days later, the MCS requested EW provide an updated consent form to allow the MCS to forward the Report to Dr. B and to C at Belmont House.

[157] In February 2020, EW reported she was scheduled to start mental health appointments through the Cole Harbour Mental Health facility.

[158] In April 2020, JH from Community Mental Health, indicated she had been working with EW for two months. JH advised that she had started the process of explaining Dialectical Behaviour Therapy (DBT) to EW, and she had started providing EW with information about Borderline Personality Disorder and was discussing that information with EW.

[159] JH advised that EW would not be able to get into the DBT program until the fall but she was prepared to continue to work with EW if EW identified a need for support. JH advised that she had not yet received a copy of Dr. P's Psychological Assessment Report in relation to EW.

[160] At the end of April 2020, EW alleged that her assigned worker was falsifying information "for her to look bad"

[161] At the end of May 2020, EW reported that she had missed an appointment with JH at community mental health due to "being at the hospital".

[162] On June 3, 2020, EW advised that she was taking medication prescribed by her new doctor, Dr V. She advised that when Covid related restrictions were lifted she would provide the MCS consent to speak with her doctor.

[163] EW advised she was looking for a new counselor to provide CBT, as “she hasn’t been able to contact JH, at community mental health”. EW expressed that she was nervous about missing out on the DBT group scheduled for the fall.

[164] On June 9, 2020, EW advised she had found a psychologist, FM, who does CBT therapy. EW was advised that the MCS was prepared to pay for her therapy. FM later reported she had sufficient funding for ten to twelve sessions, she would be meeting with FM on a weekly basis and she would be taking her medication for anxiety. EW expressed that she felt more focussed.

[165] On June 30, 2020, EW advised that the manager at community mental health services had advised her she could do the intake process again but she would not be guaranteed a space in the DBT program in the fall. On July 9, 2020, EW reported that community mental health services was not prepared to work with her again as she had arranged a private therapist.

[166] On July 23, 2020, EW reported she was still seeing FM and she would ask her lawyer to send FM a copy of the Psychological Assessment Report. EW later claimed she had provided FM a copy and she would try to arrange DBT sessions through the military.

[167] On August 18, 2020, EW expressed concern that she had not yet been able to arrange DBT therapy. EW was reminded that the MCS could contract with a professional to provide her therapy. The MCS's representative confirmed the plan was to transition the children back into EW's care and otherwise the plan would be to seek to place the children in the MCS's Permanent Care and Custody.

[168] On September 24, 2020, a decision was made to contact EW's therapist, FM, to inquire about EW's engagement in services. If no concerns were raised the plan was to move forward with a transition plan including partial supervision in EW's home. Family support services would be available to assist with the children's transition and the MCS's would support EW participating in joint therapy sessions with M to repair M's relationship with EW.

[169] On September 25, 2020, SR from the DFRC, confirmed she had been meeting with EW on family planning and EW's goals. SR stated that "EW" was "doing amazing". SR expressed that she had no concerns about EW and she was prepared to continue working with EW when the children returned home.

[170] On October 13, 2020, FM, EW's therapist, reported that he had no concerns about EW and that "things were going well". FM indicated he was working with EW on relaxation techniques and managing anxieties. FM advised that he believed

EW was “prepared for the stress of the kids coming back home and has the tools to manage the stress”. FM indicated that he would support EM working on Dialectical Behaviour Therapy (DBT). He confirmed he had no child protection concerns.

[171] FM confirmed he had met with EW on ten occasions and he felt she had made good progress. FM described EW as “receptive and positive to work with”. FM confirmed that he “certainly did not have any concerns with regard to the process of moving forward with regard to visits with the children”.

[172] On October 20, 2020, EW suggested she would be able to pay for her “remaining balance for her completed CBT, but was hoping the Minister could help her with funding for DBT counseling”. EW was concerned that the DBT orientation she had already participated in would “go to waste”.

[173] On October 21, 2020, LC advised DW that EW’s parenting time with the children would be moving to partially supervised visits.

[174] On October 29, 2020, EW expressed to LC that she did not think the MCS’s plan was being accurately communicated with the Court. EW asked LC to attend Court by telephone the following week and speak to the Court rather than have the Minister’s lawyer speak.

[175] On October 30, 2020, EW expressed concern about the MCS' business records which had been disclosed to EW. SM observed that EW presented "in an anxious manner" and was suggesting the MCS's "plan is for the girls to remain in DW's care permanently". EW had also expressed this concern on September 18, 2020.

[176] EW stated that she had previous contact with the MCS's lawyer when she was a youth in "cells" in Newfoundland. EW indicated that she had assaulted the MCS's lawyer, JW, when she was thirteen years old and she believed that JW was "getting even with her and most likely conspiring with DW".

[177] Given EW's presentation, the MCS changed the plan from in home access visits to fully supported parenting time. The MCS believed EW was presenting as paranoid. EW was suggesting "that the Court documents are always being altered and nothing is as it appears to be".

[178] EW's caseworker, LC contacted EW for clarification. EW stated that she had "assaulted JW in holding cells, when she was thirteen years old and she "got charged". EW suggested there was "video evidence of the assault". EW claimed that the MCS's lawyer was "biased" against her. EW stated that the MCS's lawyer

had told her “it’s clear you’ve done something to hurt your child”. There is no evidence to support JW making any such comment to EW.

[179] EW claimed she had told her previous caseworker, JG, about the comment and “as soon as J found out she was taken off the file”. LC advised EW that JG moved into another position and LC took over her files. LC advised that the MCS was “still working to safely transition the girls”.

[180] LC later consulted with her casework supervisor reporting what EW had claimed and that when EW was talking her voice was low and her rate of speech was much slower than it had ever been. A decision was made to reinstate fully supervised parenting time for EW. The MCS took the position that EW’s mental health had declined.

[181] Later that day, LC advised EW that her visits would be fully supervised once again. EW indicated there were no concerns with regard to her mental health and that the lawyer representing the MCS in her matter should not be on her file. LC stated to EW that she had not assaulted the MCS’s lawyer and EW indicated she would provide the video. EW indicated she was not wrong and if she was wrong she would not have any evidence.

[182] On November 6, 2020, LC spoke with EW about arranging Dialectical Behavioural Therapy, through the MCS's service providers. EW indicated that she had her own counselors including FM, whom she had to pay before she could schedule another appointment and that she was scheduled to see a therapist, E, who works with the Military Family Resource Centre. LC advised that the MCS wanted to arrange and pay for a service provider to ensure EW did not face any barriers.

[183] When LC asked EW about contacting the DBT program through community mental health EW advised that she had been "turned down as she does not meet the criteria". LC suggested she could advocate for her to be accepted to the program, and EW suggested she could speak with her doctor.

[184] On November 10, 2020 EW advised that she had an intake appointment for DBT on November 17, 2020. EW stated that she had started meeting with A at the Military Family Resource Centerre but on November 13, 2020, EW reported that A could not start working with her for a month and a half.

[185] LC offered to contract with a counselor to start working with EW as soon as possible. EW asked LC to repeat what EW had told her about the MCS's counsel. LC advised that EW told her she had assaulted the MCS's legal counsel. EW asked LC why the lawyer had reported that the got into a fight and described the behaviour

as “incriminating”. EW stated “I seriously refuse to live in this false reality”. EW then went on to provide another explanation for her statements. EW also expressed concern regarding DW being “quite elderly” to care for the children.

[186] On November 20, 2020, EW indicated that the comments she had made about the MCS’s lawyer was a “miscommunication” indicating she was “panicked and stressed”.

[187] On November 25, 2020, LC advised EW that she had spoken with a therapist who may be willing to work with her. LC asked EW if she would provide her consent to provide the therapist with a copy of her Psychiatric Assessment Report. EW advised that her service providers: including her life coach BD, her psychologist FM, and her doctor, “don’t believe”, the Psychiatric Assessment Report, they believe it is inaccurate.

[188] LC asked EW to explain further and EW stated “certain parts are for me and my lawyer so it’s not smart to disclose”. LC advised EW that it was important for her to know what parts EW felt were inaccurate. EW indicated that her doctor questioned the medication recommended. EW advised that if she was not comfortable with the therapist arranged by the MCS that she would not participate.

[189] The Minister contracted with a therapist to provide DBT for EW and the first session was scheduled December 3.

[190] On December 3, 2020, LC participated in EW's initial session with the potential new therapist, JB. EW advised that she did not think her mental health was an issue including that she did not have an eating disorder. JB advised that the CBT sessions EW had completed with FM were part of a process and "not a course that can be completed". EW stated "I appreciate your knowledge on those types of counseling but I think FM would disagree". EW indicated she did sessions with FM every two weeks for four months starting on June 9, 2020.

[191] LC spoke with JB about the "major presenting problems" identified by the MCS including physical neglect, which was substantiated, and concerns regarding EW's mental health which is considered inconclusive. JB inquired with respect to specific examples and details. LC noted that EW often presents as "anxious with quick speech" and there was a concern about EW yelling at the hospital. LC indicated that while she was continuing to review the business record of the Minister of Community Services with JB that EW would interrupt her "in mid sentence".

[192] At the end of the session JB noted that they were out of time and she did not feel she could make a full assessment that day. JB advised that if EW was going to

interrupt and make notes during the session that JB would not provide EW with services. JB advised that she was of the opinion that EW needed a psychiatrist following her.

[193] On December 5, 2020, EW alleged that “none of the workers are being honest”. Several days later SM spoke with EW about the observations being made and the concerns needing to be addressed. SM suggested EW needed more routine, and structure during her supervised parenting time. EW advised SM that M called her a “whore” during her recent parenting visit and that she believes it was the access facilitator who told M to call her a whore. EW indicated that the “inconsistencies of the agency are adding up, and they will be brought to the attention of the Court”.

[194] On December 14, 2020, LC spoke with EW regarding an upcoming case conference. EW indicated she felt the zoom meeting with JB went poorly. She advised she was “scared” and suggested JB “is a little short”. LC indicated that it was her impression that JB “holds her clients accountable and challenges them”. EW indicated she was “willing to try to work with JB”. EW stated that she felt JB “discredited” her therapists.

[195] On December 17, 2020, a case conference was held. JB advised LC that she requires her clients to have insight and that it was her perception that EW “was not

ready for counseling”. JB observed that EW presented with “pressured speech, and interruptions”. JB indicated that she did not observe EW to have any insight and was of the opinion that EW is “concerned about what other people’s perceptions are”.

[196] JB noted that EW “would be suitable for psychiatric evaluation and follow through with DBT skill building. JB opined that EW’s presentation had indices of “some level of bipolar or borderline personality disorder” and that there was no individual counseling that could happen between now and the trial date that could help EW.

[197] On December 18, 2020, the Minister completed a risk management conference, and decided that given EW’s continued struggles with mental health and lack of insight into these struggles, the Agency would not be able to recommend that the children return to EW’s care.

[198] The Agency decision was to terminate the proceeding in support of a *PSA* Order, with M residing in the primary care and custody of DW, and A residing in the primary care and custody of DH. The Agency concluded they would support all access with EW being fully supervised by either a community organization or an agreed upon individual approved by the caregiver.

[199] On December 29, 2020, EW advised LC that she was confused about what to do given that her lawyer “had quit on her”. EW advised that she felt the MCS’s lawyer’s “reaction was crazy when she started yelling”. LC advised that the lawyer was not yelling at any point in the case conference.

[200] EW stated that the Agency had “no substantiated” concerns with her and that LC “had put in minimal effort” in helping her and that she felt LC “never liked her”. EW did not agree with the Agency’s plan to place A with DH. LC advised EW she should contact Nova Scotia Legal Aid, as soon as possible.

Trial

[201] EW represented herself at trial. EW expressed that at times she felt everyone was working against her. Throughout her involvement with the MCS, EW often argued that the MCS’s business records should be reviewed and that all referral information was either false or malicious and that the children should be returned to her primary care.

[202] EW repeatedly expressed concern about her children being manipulated by her mother and she argued that her mother’s reports to the MCS were not made for the children’s benefit. EW expressed concern about her mother’s lack of support for A when she was born. EW alleged that DW would refer to A as “that baby” and ask

where M was. EW stated that she did not get along with her mother and that the circumstances present while she was growing up with her mother contributed to her problems.

[203] EW acknowledged the possible diagnosis of Borderline Personality Disorder, and that symptoms “could be causing issues”. However, she stated that she did not accept everything the psychiatrist diagnosed her with, for instance claiming she did not have an eating disorder. EW explained she had a lot “going on in her life” and though she experienced anxiety it did not jeopardize her ability to parent the children.

[204] EW stated she understood the MCS was concerned about her mental health, and the cleanliness of her home. She argued that she was in a “positive mental state” and that she could maintain her mental state if she kept a “healthy distance” from her mother.

[205] EW advised the court she had attended Cognitive Behavioural Therapy with FM and “was still paying for those”. Neither she nor the Minister called FM as a witness. Feedback from FM on October 13, 2020 was included in the business records of the MCS and is reproduced in part above. FM confirmed he had no child

protection concerns with EW and that he “certainly did not have any concerns with regard to the process of moving forward with EW’s visits with the children”.

[206] EW stated that she had started Dialectical Behaviour Therapy with JB and she had attended two sessions. EW suggested she had been working with her family doctor in an attempt to determine what medication would work for her. EW’s service providers did not provide a letter or a report to the Court and EW did not call them to testify on her behalf at trial.

[207] The Minister of Community Services did call BD, a therapist who had worked with EW, to testify. BD confirmed he is a “registered counseling therapist, and life coach”. He explained he helps his clients find resources to help themselves. As a child of a veteran, EW was eligible for services with the Employment Assistance Program (EAP) offered through Employment Assistance Health Canada, and through this program, BD provided EW with his services.

[208] BD confirmed he had worked with EW between August 2019 and the end of February 2020, and that the contract was for nine hours and those hours were used up. BD explained that when COVID hit, his practice closed down. He explained that through the EAP program he was authorized to provide assessment, referral, and counseling services, but not therapy.

[209] BD observed that while he was working with EW she presented with “a lot of inconsistency, and “tangential thinking”, and that she appeared to be experiencing “severe stress”. He indicated he was not a psychologist, or a psychiatrist, and he was not in a position to make a diagnosis. When asked if he had been provided with a copy of the Psychiatric Assessment Report completed in relation to EW, BD advised that he “did not see a Report”.

Analysis

Credibility

[210] All court decisions involving children must be based on their best interests. In assessing the evidence related to the children’s best interests, this court must have regard to the standard of proof, and make credibility determinations.

[211] In *F.H. v. McDougall*, 2008 SCC 53, Rothstein, J. confirmed that there is only one standard of proof in civil cases - that is proof on a balance of probabilities. In every civil case, the court must scrutinize the evidence when deciding whether it is more likely than not that an alleged event occurred. The evidence must not be considered in isolation, but must be based upon its totality. The evidence must always be clear, convincing, and cogent to satisfy the balance of probabilities test. The court must assess the impact of

inconsistencies on questions of credibility and reliability, which relate to the core issues. It is not necessary that every inconsistency be addressed, but rather a judge must address in a general way the arguments advanced by the parties: *F.H. v. McDougall*, paras. 40, 45 and 49.

[212] In *Baker-Warren v. Denault*, 2009 NSSC 59, as approved in *Hurst v. Gill*, 2011 NSCA 100, this court reviewed factors to be considered when making credibility determinations at paras. 18 and 19, which state as follows:

18 For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events:" *R. c. Gagnon*, 2006 SCC 17 (CanLII), 2006 SCC 17 (S.C.C.), para. 20. I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization:" *R. v. M. (R.E.)*, 2008 SCC 51 (CanLII), 2008 SCC 51 (S.C.C.), para. 49.

19 With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

- a) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses: *Novak Estate, Re*, 2008 NSSC 283 (CanLII), 2008 NSSC 283 (N.S. S.C.);
- b) Did the witness have an interest in the outcome or was he/she personally connected to either party;

- c) Did the witness have a motive to deceive;
- d) Did the witness have the ability to observe the factual matters about which he/she testified;
- e) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
- f) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions: *Faryna v. Chorney* 1951 CanLII 252 (BC CA), [1952] 2 D.L.R 354;
- g) Was there an internal consistency and logical flow to the evidence;
- h) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased; and
- i) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

20 I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility: *R. v. Norman* (1993), 1993 CanLII 3387 (ON CA), 16 O.R. (3d) 295 (Ont. C.A.) at para. 55. In addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in *Novak Estate, Re*, supra, at para 37:

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See *R. v. D.R.*, [1966] 2 S.C.R. 291 at 93 and *R. v. J.H.* supra).

[213] I have assigned the civil burden of proof in deciding the issues raised by the MCS, EW, DH, and DW. I have reviewed the totality of the evidence which is properly before the court by way of exhibit or as elicited while a witness testified. I have also considered the submissions of the parties and the applicable legislation, and case law.

EW's credibility

[214] In 2015, EW acknowledged misleading authorities by making allegations against DW. However, in January 2017, after EW was charged with assaulting DH, representatives observed that EW continued to focus on the past “purported horrors she had endured while living with her mother”. EW was described as “entrenched in her belief about her mother and her mother’s power over her”.

[215] Further, on September 7, 2019, after the children had been placed in DW’s care by the MCS, EW once again seemed to change her position. Suggesting she was worried about the children being in her mother’s care, once again alleging her mother had been abusive to her in the past.

[216] In early February 2017, after EW was charged with assaulting DH, social workers paid an unannounced home visit to EW’s home to ensure she and DH were complying with the MCS’s direction not to be together in M’s presence. Upon

entering EW's home, the workers noted EW's bedroom door was closed. They obtained permission to enter EW's bedroom and upon entering they observed EW's window was wide open, the screen had been removed from the window, and there were footprints outside her window.

[217] EW denied anyone had been in her home before the workers arrived and stated she was just airing out her bedroom. There was no "air of reality" to EW's response. When the workers were leaving EW's building EW's landlord inquired about the man he had observed leaving through EW's window just before the workers arrived believing it to be DH. The workers returned to EW's unit to confront EW regarding her landlord's observation. Only then did EW acknowledge someone else had been at her home but she did not acknowledge it was DH.

[218] In March 2019, a local pharmacy manager contacted child protection services reporting EW failed to properly supervise her child while in the pharmacy. He observed EW was on her telephone while M was left unsupervised for approximately fifteen minutes. The referral source observed that M managed to open a package of chocolate and a nasal applicator set while EW was not adequately supervising her.

[219] EW's response was that M was "within earshot" and that the referral was made in "spite" and the referral source was very "homosexual". EW's reaction

raises serious questions about EW's view of what adequate supervision should be for M and A.

[220] In August 2019, the MCS received an anonymous referral regarding the condition of "T"'s home, including information suggesting "T" had no power in her home for an extended period of time. Social workers attended "T"'s building hoping to discuss the referral information with "T".

[221] When asked by the workers, EW did not acknowledge she is also known as "T". EW's avoidant behaviour made it difficult for workers to gain access to her home to investigate concerns in a timely way. Once the MCS established the concerns related to EW's home, including a lack of power, EW alleged DW had transferred a balance onto EW's power bill. I do not except EW's suggestion that DW would be able to transfer a balance onto EW's bill.

[222] In September, 2019, DW explained that when EW was evicted from her apartment in October 2017, she helped EW secure possession of another apartment and DW advised that she connected EW's power in DW's name. DW reported that EW did not keep up with the payments and EW owed \$1600. DW advised that she paid EW's \$1600 bill, and DW then put EW's power back in EW's name.

[223] I accept DW's explanation that she had helped EW out in October 2017, and then again later by paying her power bill. I find EW once again failed to keep up with her bills and her power was cut off in or around July or August 2019.

[224] When the investigation was ongoing in August 2019, EW took the position that her mother, DW, was prohibited by law from seeing her children. EW insisted and used various strategies to convince anyone having involvement with the matter to believe that her mother did not have a legal right to see the children. EW was aware she had not actually sought and had not been granted any such Order from the Court.

[225] On December 17, 2019, EW accused a child protection worker of lying about having attended at her home for a pre-arranged meeting. EW suggested the worker was refusing to meet with her. When the social worker reminded EW that she had left a business card at her door and this would confirm the worker had been at her home EW continued to argue. The next day EW acknowledged she was "heated" the previous day after she ran late for the scheduled appointment and she did not want the Agency to think she was avoiding her worker.

[226] As noted above, on or about October 30, 2020 EW made an allegation against the MCS's legal counsel which was clearly untrue and appeared to be an effort by

EW to have legal counsel removed from her file. It is extremely difficult to understand why EW would make such a claim and how she would believe this would result in counsel being removed from her court matter. The fact that EW would make such a representation when it could clearly be disproved brings into sharp focus the issue of EW's credibility.

EW's unwillingness to share M and A

M's father RB

[227] EW initially told her probation officer and her doctor that RB was the father of her unborn child (M). However, EW later advised child protection staff that RB was not M's father. EW acknowledged she was in an intimate relationship with RB in January 2015 but claimed they were not in a relationship when A was likely conceived in February 2015 and acknowledged they resumed their relationship in March 2015. EW then claimed M's father was a man named Mike from the USA, and reported that RB had moved "out West".

[228] When testifying at trial EW stated that RB's mother was excited about her pregnancy with M and that she and M met RB's family at a relative's funeral. She stated that RB's family really took an interest in M and that she and M had attended

various family events at RB's mother's home, and they had met RB's sister and her children.

[229] When the court asked EW at trial about RB's family's involvement with M the version of events EW gave about M's early contact with RB's family was not the version shared with the MCS in 2015. When questioned at trial EW did not mention RB allegedly telling EW she needed to either move out West with him or he would have his sister take M. Also there was no mention of DW allegedly calling the police to report RB's threat.

[230] RB's family did not participate in the trial process, and it does not appear they were interviewed by or had any contact with the MCS until August of 2019 when RB's mother, MW, expressed concern about the children's home. This court has no reliable information regarding RB's circumstances at the time of M's birth or his current circumstances.

[231] I understand RB's mother, MW, and her partner, D, and RB's sister and her children, have had contact with M. Given the circumstances and both DW's and EW's testimony about RB's mother's positive involvement with M, I find it is in M's best interest to have ongoing contact with her father's family. Regular ongoing

contact with RB or RB's family members which is consistent with M's best interests, should be facilitated by M's primary caregiver.

Concerns, services, or programs for M

[232] In August 2017, EW explained that M had been enrolled in daycare

[233] In October 2017, DW expressed concern that EW was not seeking medical assistance for M's difficulty with her bowel movements (chronically constipated, sometimes taking two hours to have a bowel movement).

[234] Subsequently, DW expressed concern that EW had not advised M's daycare about M's dietary needs or about M's "pallid breathing" problem.

[235] In August 2019, DW expressed that she would like to make arrangements for M to see a child psychiatrist. DW advised that she and other extended family member would support M and A's contact with EW but only if EW got help and engaged in meaningful long term treatment. DW indicated she did not believe EW could provide a "secure, healthy environment for the girls."

[236] In October 2019, the MCS confirmed arrangements would be made for M to see a child psychologist. M first met with the child psychologist near the end of October 2019.

[237] On March 11, 2020, the assigned family support worker, SM attended EW's supervised access visit. She observed that EW was upset because M was saying she wanted to live with her grandmother. SM observed that EW responded well to M's cues and she attempted to redirect M's behaviours. SM noted that M "screamed a lot and appeared to heighten her behaviour in an attempt to get EW's attention".

[238] The assigned caseworker for MCS met with M and M stated that she wanted to live with her grandmother. When M was told she could have fun at her supervised access visits with her mother and still live with her grandmother M responded by stating "I don't know how to love two people at the same time".

[239] The assigned caseworker spoke with the child psychologist working with M as she believed M's resistance to attending visits with EW might be related to M's belief that "if visits go well with EW that she will have to live with EW and leave DW." On September 15, 2020, the MCS approached M's child psychologist to inquire about her working with both M and EW to work on their relationship.

[240] On September 23, 2020, EW expressed concerns about M's aggressive behaviour toward A.

[241] On October 21, 2020, LC advised DW that EW's parenting time with the children would be moving to partially supervised visits. DW suggested M was an

anxious child and needed to be prepared in advance for changes. LC advised DW that EW was doing “really, really, well”. DW expressed concern about M returning to EW’s care and stated she was concerned M would develop self-harming behaviours.

[242] On October 26, 2020, M decided she did not wish to visit with EW.

[243] On October 27, 2020, EW met with SM and inquired about obtaining a timeline for the children’s return to her care. SM observed that M needed to be constantly prompted to “use her manners”. SM observed that M “acts out in an attempt to have the focus return to her” and that M will “punch and pinch EW ,” and “at times be destructive with toys or items close to her”. Although EW previously relayed concerns to the MCS about M’s behaviour while M was in EW’s care, EW denied that M misbehaved in this manner before being placed in the Minister’s care.

[244] On October 29, 2020, TW observed that EW’s parenting time had moved to partially supported and that since the change to EW’s parenting time M had not been attending EW’s parenting time regularly. TW confirmed that the Minister would be supporting EW attending counseling sessions with M as there was a concern that there was “interference in the relationship between EW and M”.

[245] On October 30, 2020, DW expressed a concern about having EW attend M's counseling sessions with RS as it was M's safe space. However, DW indicated she was encouraging M to "be open and try it out".

[246] On November 25, 2020, EW attended M's therapy session with RS. RS reported that M "came in looking for her mum. Very excited to see her. Hugged and kissed her and sat on her knee for most of the time. She and mum played happily". RS indicated that M did not want the session to end wanting EW to carry her down the stairs and they hugged and kissed goodbye. RS observed that EW "was great during the visit too". RS stated that M wanted her mother to attend another session.

A's father, DH

[247] EW initially claimed she did not know who A's father was then she claimed DH could not possibly be A's father. DH, was not aware there was a possibility he was A's father until February 2019, and shortly after learning he may be A's father and after obtaining a paternity test, he applied for parenting time with A.

[248] In August, 2019, A, along with her sister M, were taken into the care of the MCS and placed in a foster home following EW's refusal to make a plan to have the

children placed with a family member. The children were subsequently placed with EW's mother, DW.

[249] Covid 19 interfered with DH's parenting time with A. However, prior to trial DH was enjoying parenting time with A every second weekend. No concerns were expressed by the MCS during DH's supervised or his partially supervised parenting time with A or with the plan of care DH presented for A. DH has primary care of his nine-year-old son and he and his son live with his parents, his sister, and her children. At the commencement of trial the MCS did not oppose placement of A in the primary care of DH.

Intimate partner violence between EW and DH

[250] I have given consideration to the allegations and the substantiated incidents of intimate family violence between EW and DH and recognize the premise that it is the children's right to have parenting time with both their parents, or in this case their parent(s) and grandparent as is consistent with the children's best interests. I note that at the conclusion of DH's testimony the MCS expressed concern about DH's level of awareness regarding issues of intimate family violence and at the conclusion of trial the MCS was no longer supporting A's placement in DH's primary care.

[251] When DH was initially asked questions during cross examination, DH did not take the opportunity to fully detail the incidents of violence between he and EW, or the opportunity to provide a detailed summary of what he had learned about intimate family violence through his Healthy Relationships Program offered through the court. The MCS questioned his level of awareness. When DH was prompted with follow up questions, he did acknowledge the incidents in question which date back to January 2017 and September 2017.

[252] DH explained he pled guilty, he was placed on probation, he followed through with court ordered services addressing intimate partner violence and his period of probation ended in October 2020. There is no clear and convincing evidence that DH had any previous or any further criminal involvement after the incident in September 2017.

[253] The feedback from DW, from agency staff, and from DH's mother regarding DH's interest in A, and his time with A, has been exclusively positive. I am not prepared to rely on DH's responses or his demeanor under cross-examination at trial, or his failure to take another program related to intimate family violence even while the MCS did not appear to raise the issue with him after the summer of 2020 and continued to expand DH's parenting time with A.

[254] There is no evidence before me of any other concerns regarding DH. I am confident DH is aware of the seriousness of his past behaviour. The incident in question dates back to September 2017. DH has been caring for his nine year old son and he continues to have the support of his parents, his sister, and her children.

Concerns, services or programs for A

[255] EW expressed concern about her mother's lack of support for A when A was born. EW alleged that DW would refer to A as "that baby", and ask where M was.

[256] On September 23, 2020, EW expressed concern about A not being "as attentive as she used to be", and presenting as "timid".

[257] On October 13, 2020, SM observed that A was a "mild mannered girl who is constantly being mistreated by her sister". SM indicated that she "reminded EW that it was her job to protect A from M when the situation calls for it" and suggested EW "be extra diligent when supervising the girls."

[258] LC advised DW that she was "extending DH's time with A". DW responded by saying she felt "this will be good for A". DW stated that she had "known his (DH's) family for a long time and there is no drama".

[259] On October 22, 2020, JS did suggested A appeared to be developing “a lot of the same behaviours as M (pinching, hitting, and such)”.

Best interests

[260] There is no presumption that it is in the best interest of children to be parented by both parents, or in this case, both parents, and their grandparent, in an equal time sharing arrangement. The question is how much contact with each parent, or in this case, parent(s), and grandparent, is in the best interest of these children given their ages, stage of development, personalities, educational and other needs in the context of the ability of each parent or grandparent to carry out his or her parental responsibilities and obligations.

[261] The best interests principle has been described as one “with an inherent indeterminacy and elasticity”: *MacGyver v. Richards* (1995), 1995 CanLII 8886 (ON CA), 22 O.R. (3d) 481 (Ont. C.A.), paras. 27-29. The “test is a fluid concept that encompasses all aspects of a child, including the child's physical, emotional, intellectual, and social well-being”.

[262] I must concern myself with not only the day to day needs of M and A but also with their ability to mature, develop, and grow into confident, happy, and well-adjusted young women. The Supreme Court of Canada, in *King v. Low*, 1985

CanLII 59, [1985] S.C.J. No. 7, directed the court to review the plans of “rival claimants” and “chose the course which will best provide for the healthy development of the child” (para 27)

[263] Pursuant to section 18(6) of the *Parenting and Support Act* the court is directed to consider the following factors:

The child’s physical, emotional, social and educational needs, including the child’s need for stability and safety, taking into account the child’s age and stage of development

M

[264] M has been described as a bright child, who can present as anxious. When anxious M has sometimes experienced spells of “pallid breathing” appearing to pass out and not to be breathing then waking up shortly afterward. DW and her mother explained that another family member had experienced this condition.

[265] In January 2017, child protection representatives were present when M experienced an episode of “pallid breathing” while DW was holding her and EW was approaching M to say goodbye. They observed DW responded appropriately, and that EW responded in an anxious manner.

[266] In October 2017, DW expressed concern to the Agency about M being chronically constipated, sometimes taking hours to have a bowel movement. DW

indicated she had observed EW did not appear concerned and was of the opinion that EW only took M to the doctor after DW stated that if EW did not take her, that she would. Subsequently, when M was placed in daycare DW learned that EW had failed to advise staff about M's past episodes with pallid breathing, or about her dietary restrictions due to the problems with her bowels.

[267] At, times, during the Agency's involvement with EW and with M, M has been observed to exhibit certain challenging behaviours. Various agency workers have observed M exhibit a significant level of aggression toward her sister A and some aggression toward EW.

[268] Like the MCS, I have concerns about DW's possible interference in M's relationship with EW. However, I am satisfied that the physical environment in DW's home is sufficient to meet M's needs.

A

[269] Throughout most of this family's involvement with the MCS, A has been described as quiet, not very assertive, and needing to be carefully supervised while in the presence of M. However, more recently A has been described as starting to exhibit aggressive behaviours similar to those exhibited by M.

[270] I am satisfied that the physical environment in DH's home will meet A's needs. DH resides with his parents, his nine-year-old son, his sister, and her children, and enjoys continued support.

[271] Concerns have been raised about EW's ability to maintain an adequate home for the children. EW was evicted from her home at the end of October 2017, she reported that she found a new apartment, the MCS later learned that DW had actually subsidized EW's move, and by early February 2018 was experiencing further financial stress, and in July or August she once again failed to manage her finances in order to maintain a home for the children. Moving in with DW is no longer an option.

[272] In August, 2019, the Agency received an anonymous referral indicating there was no power in EW's apartment, and expressing concerns about the condition of the home, and regarding EW's mental health. EW failed to manage her financial resources (for instance student loan, child tax benefit), and pay her bills, and in particular her power bill.

[273] Of paramount concern is that EW placed both M and A at risk of physical harm by using candles throughout her apartment, which were observed to have burned down without any flame retardant material under them. In addition, it was

observed that EW had placed a toaster on her floor and was using it as a lighter when smoking. I am not satisfied that EW is able to provide M or A with a safe, stable home environment.

each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian

[274] During the initial stages of the MCS' involvement M made a comment about DW being bad, when asked why she said that, M responded by saying that EW had told her so. After M was placed with DW, M was observed to make comments about EW being bad. When asked why, she explained that EW had refused to allow her to see DW. I find both DW, and EW have at times influenced M's perception of the other.

[275] Workers have also observed M state that she needs to practice saying she does not want to live with EW. Concerns have been expressed about the level of encouragement DW has given to M to ensure she attends parenting time with EW.

the history of care for the child, having regard to the child's physical, emotional, social and educational needs;

[276] M was born in November 2015, and lived with EW in an "ensuite", attached to DW's home. By February 2016, EW was making plans to move out with M, and moved out around May 2016. EW began a relationship with DH at around that time.

I find DW cared for M a significant amount after her birth. In September 2017, EW commented about her mother not wanting to return M anymore, and indicated she had decided to allow her mother shorter visits with M.

[277] In October 2017, DW claimed she had M in her care about eighty percent of the time. In February 2018, DW advised that she was caring for M “all the time”, including overnight. DW acknowledged that her relationship with EW was unstable at times, but stated that EW was a wonderful mother to M.

[278] In November 2018, DW contacted the Agency to report that EW had become upset after she allowed EW’s brother, J, to take M to the market. This was the same brother EW had accused of sexually abusing her, and had a falling out with him thereafter. DW did not seem to understand why EW was upset, and why she was insisting that M be returned to her care by a certain time.

[279] In November 2018, although EW did acknowledge that M does enjoy her time with DW, she alleged that DW “put her down in front of M”. EW indicated she was trying to keep her distance from DW, and she was limiting DW’s time with M, for instance, insisting DW return M immediately after her ballet lesson.

[280] DW accused EW of physically harming M, which was not substantiated, and DW admitted she was recording all her conversations with EW. On one particular

occasion, EW “lunged”, toward DW in an effort to take her telephone away, as she was recording EW. The police were involved but no charges were laid.

[281] By December 2018, EW was indicating she would be seeking a restraining order against her mother. In January 2019, DW applied for grandparent access and the parties were not on good terms. In August 2019, when EW was experiencing difficulties DW acknowledged EW would not want the children with her. During that period EW insisted she had a restraining order against DW.

[282] M was in EW’s primary care but M had considerable contact with DW between the time of her birth in November 2015 through to September 2018, with some difficulties developing in November 2018. M was then placed with DW beginning in September 2019 through to the trial in January 2021.

[283] A was born in May 2018, and would have had some contact with DW between May and November or December 2018 and then A was placed in DW’s care beginning in September 2019 until trial in January 2021.

[284] Because of EW’s choice not to notify DH that he had a daughter, A’s relationship with DH began when she was just over a year old, in or around the fall of 2019. Most recently DH has been enjoying parenting time with A every second

weekend. I am confident that A has developed a relationship with her father, and his family.

the plans proposed for the child's care and upbringing having regard to the child's physical, emotional, social and educational needs;

[285] M and A have been inappropriately burdened with conflict arising in EW's relationships.

DW's plan

[286] DW proposes to have both M and A continue to reside with her. She was agreeable to DH having parenting time with A every second weekend. DW was also agreeable to following the Court's direction regarding EW's contact with the children.

[287] In 2015, DW advised that she had experienced problems parenting EW but she agreed to support EW while maintaining certain boundaries. EW did acknowledge she had lied about DW's past parenting, and she reported that she could rely on DW to provide her and M with support.

[288] On several occasions, concerns have been raised about DW's interactions with others. For instance DW's interactions with EW in hospital when M was born ("spats" witnessed between the two), and DW's interactions with hospital staff when

A was born (security asked DW to leave the IWK hospital), and DW's interactions with staff at Dr. B's office, when EW was discharged from her care, (concern was expressed about her demeanor when explaining EW was not drug seeking).

[289] Again in August 2019, DW reported having contacted hospital staff when EW was experiencing difficulty stating "hospital were not listening to her, and DW advised staff that EW did not use drugs, and they were not witnessing "drug seeking behaviour". DW's behaviour is of concern to me.

[290] DW has disclosed past and ongoing conflict with one of her sons, and with his wife, who have children. DW has described her son J as a recovering addict, and has stated that at times, she is his target. That he, and his wife had lived with her in her home for a period, and she involved the police to have them removed, and they hate her. DW has disclosed that her son requested overnight time with M and A previously, and he became quite emotionally escalated when he was not included in an invitation to one of the children's birthday parties.

[291] DW acknowledged that EW alleged that her brother J, had sexually abused her, yet in November 2018 she allowed J to take M to the farmer's market, and reported that EW had a "meltdown", when she heard.

the nature, strength and stability of the relationship between the child and each parent or guardian;

[292] Given the level of conflict between DW and EW over M's and A's lifetime and the comments made by M in EW's presence and made in the presence of the MCS's representatives I have concerns about whether the children have a secure attachment to either EW or DW.

[293] There has been a history of M presenting as though she does not feel she can show affection to her mother in DW's presence and she cannot talk to her mother about fun things she does with DW while in her mother's presence. Both EW and DW must not speak negatively about the other in M's. M must be permitted to love more than one person.

[294] I would suggest DH has always had positive interactions with A and with DW since his involvement. EW, DW, and DH must ensure they do not speak negatively about the other(s) in A's presence.

the nature, strength and stability of the relationship between the child and each sibling, grandparent and other significant person in the child's life;

[295] Repeated concerns have been expressed about the level of supervision required to ensure M does not hurt A. M appears to want to stay with her

grandmother and has expressed fear that her mother will prevent her from visiting with her grandmother.

[296] EW has suggested that DW did not pay attention or care about A. That immediately after A was born DW was more interested in spending time with M. I do not doubt that DW cares about A.

[297] I do not doubt that M and A have a sibling bond. Unfortunately, it appears that M struggles to be gentle and kind to A. It is hoped that DW can ensure M and A's time together is extra special when they do get together.

[298] It appears neither M nor A is likely to have a positive bond with DW's, son, J's children. There is past conflict with that part of the family and DW will be expected to shelter M from the conflict as best she can. On the other hand A has a brother and three cousins living with her at her father's house. I am hopeful she will have great adventures with her sister M, her brother M, and her cousins.

the ability of each parent, guardian or other person in respect of whom the order would apply to communicate and co-operate on issues affecting the child; and

[299] EW has shown she is unable to communicate with her mother, with RB, or with DH, when it comes to the children.

[300] DW is not able to communicate effectively with EW.

[301] There is no concern with regard to DH's communication with DW. However, there is an expectation that DH, and EW will not have verbal contact, or be in each other's presence while A is present.

the impact of any family violence, abuse or intimidation, regardless of whether the child has been directly exposed, including any impact on the ability of the person causing the family violence, abuse or intimidation to care for and meet the needs of the child, and

[302] DH completed the Healthy Relationships counseling he was required to complete while on probation following an assault by DH, on EW. He is encouraged to complete any other programs he feels may be useful in ensuring his interpersonal relationships are positive.

[303] EW did not complete her counseling through Alice Housing, and EW continues to experience substantial conflict in her interpersonal relationships, and her relationships with any professionals who challenge her perception, or do not provide her with what she asks for.

the appropriateness of an arrangement that would require co-operation on issues affecting the child, including whether requiring such co-operation would threaten the safety or security of the child or of any other person.

[304] I have concerns, about the environment EW and DH provided for M while they were in a relationship beginning in or around May 2016 through to September 2017. Both EW and DH were involved in conflict when M would have been present.

Various concerns arose including two substantiated incidents of domestic violence in January 2017 and September 2017.

[305] Based on reports from her counselor at Alice Housing EW did not complete her counseling in relation to intimate partner violence.

[306] DH pled guilty to an incident of intimate partner violence and he completed counseling on the topic.

[307] It is not in A's best interest to require DH to cooperate with EW on issues affecting A. Although DH and DW can cooperate on issues affecting A without threatening A's safety or security, or anyone else's, I find it is in A's best interest for DH to be the decision maker in relation to A.

[308] DW has stated that DH has been completely appropriate during his virtual parenting time with A. DW also disclosed she has known DH's family for a "long time", and there is "no drama".

[309] In *Burns v. Burns* 2000 NSCA 1 (CanLII), the Court of Appeal provided guidance with respect to identifying a "primary care parent". Justice Roscoe stated:

29.....the actual period of time spent with the children is not the only determinant. More importantly, in my opinion, is which parent has taken primary responsibility for all the important decisions concerning the

health, safety, education, and overall welfare of the children, since the parties separated.....

30 In addition to the major matters, the primary caregiver is the parent who deals with the countless less significant, but nonetheless obligatory, daily arrangements for the children's clothing, haircuts, hygiene, extracurricular activities and everyday mundane affairs. Who would buy a present for them to take to a school friend's birthday party? Who makes the appointments and takes them to the dentist? Which parent is keeping the record of their vaccinations, and fills their prescriptions? Who goes to the parent-teacher interviews? Who chose the pre-school?..

[310] In *C. (J. R.) v. C. (S.J.)*, 2010 NSSC 85, Justice MacDonald commented about the decision in *Burns*:

[12] The decisions and activities described by Justice Roscoe are critical to a child's well-being and may be overlooked by a parent who has never been required to make these decisions or carry out these activities. However, because the primary care parent in a relationship was frequently the female partner, this analysis has come under attack particularly from fathers. The division of labour within a family often evolves to place the female partner in the role of primary care parent. It is easier to have one person attending to many of the above described parenting functions. But these are functions the other parent can learn to perform. It may be more important to examine the nature and quality of the child's relationship with each of his or her parents than it is to merely add up the number of parenting tasks performed by each and assume the parent who performs more of these tasks is the "primary care parent" who should therefore have day to day care of the child. More illuminating might be answers to questions like these (my emphasis):

- What does the parent know about child development and is there evidence indicating what is suggested to be "known" has been or will be put into practice?
- Is there a good temperamental match between the child and the parent? A freewheeling, risk taking child may not thrive well in the primary care of a fearful, restrictive parent. The evidence is not clear in this regard.
- Can the parent set boundaries for the child and does the child accept those restrictions without the need for the parent to resort to harsh discipline?

- Does the child respond to the parent's attempts to comfort or guide the child when the child is unhappy, hurt, lonely, anxious, or afraid? How does that parent give comfort and guidance to the child?
- Is the parent empathetic toward the child? Does the parent enjoy and understand the child as an individual or is the parent primarily seeking gratification of his or her own personal needs through the child?
- Can the parent examine the proposed parenting plan through the child's eyes and reflect what aspects of that plan may cause problems for, or be resisted by, the child?
- Has the parent made changes in his or her life, or behaviour to meet the child's needs, or is he or she prepared to do so for the welfare of the child?

[311] As stated by Justice Chiasson in *K.A. v. O.E.*, 2017 NSSC 332:

[25] The custodial options that the court may consider were aptly described in the case of *V.K. v. T.S.* 2011 ONSC 4305 (CanLII), 2011, ONSC 4305, at paragraph 68:

"68 The term "custody" refers to parental decision-making and authority respecting a child. As the Supreme Court of Canada stated in *Young v. Young*, "the custodial parent is responsible for the care and upbringing of the child, including decisions concerning the education, religion, health and well-being of the child." Traditionally, the options respecting custody which the courts have considered have been sole custody or joint custody, which accords both parents full equal parental control over and responsibility for all aspects the care, upbringing and education of the child. In more recent years, a third option has evolved, referred to as "parallel parenting..."

[312] Throughout the *Children and Family Services Act* proceeding, and at trial, EW argued that the children should be returned to her primary care. As the timeline available under the *Children and Family Services Act* was coming to an end, the Minister assessed EW as having made progress, and did expand EW's parenting time with the children, with a view to returning the children.

[313] The Minister of Community Services re-assessed EW after she appeared to be struggling with her mental health. The Minister argued that EW had not done the necessary work, and did not have the supports in place, to allow the children to be safely returned to her primary care. The Minister argued that EW's parenting time should be supervised.

[314] EW argued that if the children were not placed in her primary care and custody, and the court ordered that her parenting time be supervised, that she would consider supervised parenting time at Veith House or supervised parenting time through the Dartmouth Family Centre. EW stated that she did not want to have her mother, DW, or A's grandmother, KH supervising any of her parenting time.

[315] At the commencement of trial, DH's plan was to have A in his primary care and DW's plan was to have both M and A placed in her primary care. The Minister initially supported M being placed primarily with DW and A being placed primarily with DH. No agreement could be reached.

[316] After DH testified at trial, the Minister of Community Services expressed concern about DH's answers to questions about his and about EW's past history of intimate partner violence (prior to A's birth, but while M was living with EW), suggesting DH "lacked insight".

[317] In her final argument, the Minister supported the placement of both children in DW's primary care and no longer supported DH as A's primary parent. The Minister argued that DH should continue to have parenting time much as he had been having prior to trial, every second weekend.

DH's plan for A

[318] I am confident DH has knowledge of A's needs, including the need to be free of conflict and to be protected from harm. Very little has really been said about A, however DW recognized DH's genuine interest in A's future. DH has stayed out of trouble, and he continues to have considerable support available through his family.

[319] I do not have the same level of comfort when considering placement of A in DW's home. I find DW's ongoing conflict with EW and her conflict with her son, his wife, and their children, is concerning.

[320] There is another option available to A. The option includes an older brother she is getting to know, and cousins she will be living with and going to school with. DW has stated that there is no "drama" with DH's family. I find that it is in A's best interest to be in a home with less history of conflict.

[321] Although A and M will not be living together full time they will hopefully have opportunities to have quality time together arranged by DW and DH. A will be in the sole custody of DH and he will make decisions in A's best interest.

[322] The transition for A from DW's home will occur as follows, unless A experiences any distress. Given the history of concerns regarding DW's possible interference with M's relationship with EW, if A is experiencing discomfort with the transition, then she shall be placed in DH's home exclusively until he determines if it is in A's best interest to have contact with DW and M again.

[323] Assuming A's transition will be a smooth one, and DW is open to taking responsibility for A's pick up from, and transportation back to DH's home, then the schedule should proceed as follows:

March 2021

1. As of March 1, 2021, A will start having parenting time with her father, DH between Sunday evening at 6pm, and Friday evening at 6pm;
2. Throughout the month of March 2021, A will spend time with DW, and with M, from Friday at 6pm, until Sunday evening at 6 pm. With the exception of EW's parenting time with A, as scheduled at Veith

House, at all other times A will be in the care, and custody of her father, DH;

April 2021

3. A will have parenting time with her father on April 1, 2, and 3 until 12:00 pm, but as of April 4, 2021, at 12:00, A will have parenting time with her father, DH, through to Saturday April 10, at 12:00 pm, and repeating the same schedule every week throughout April 2021.
4. Throughout the month of April 2021, A will spend time with DW, and with M, every Saturday from 12:00 pm, through to Sunday at 12:00 pm. With the possible exception of EW's parenting time with A, as scheduled at Veith House, at all other times A will be in the care, and custody of her father, DH;

May 2021

5. As of May 1, 2021, A will have parenting time with her father until 5:00 pm on May 1, 2021, and then again from Sunday May 2, 2021, at 12:00 pm, through to Saturday May 8, 2021, at 5:00 pm, and the schedule will repeat for every week in May 2021.

6. Throughout the month of May 2021, A will spend time with DW, and with M, every Saturday from 5:00 pm, until Sunday at 12:00 pm.

With the exception of EW's parenting time with A at Veith House, at all other times A will be in the care, and custody of her father, DH;

June 2021

7. In June 2021, A will be in the care of her father at all times, except on Sunday between 12:00 pm, and 4:00 pm.

8. Throughout the month of June, 2021, A will spend time with DW, and M, every Sunday afternoon between 12:00 pm, and 4:00 pm. With the exception of EW's parenting time with A, at Veith House, at all other times A will be in the care, and custody of her father, DH;

July 2021

9. In July 2021, A will be in the care of her father at all times, except every second Sunday afternoon between 12:00 pm, and 4:00 pm, at DH's discretion.

10. Throughout the month of July, 2021, A will spend time with DW, and with M, every second Sunday afternoon between 12:00 pm, and 4:00 pm. With the exception of EW's parenting time with A at Veith

House, at all other times A will be in the care, and custody of her father, DH;

After July 2021

11. Thereafter, A's contact time with M should take place at least bi-monthly for several hours each visit, if DH determines this to be in A's best interests.

Restrictions

12. At no time shall DH and EW be together in the presence of A. All of EW's parenting time with A shall be supervised through Veith House, or supervised by an agreed upon facilitator, at a location that does not require DH, and EW, or EW and DW to have any contact while in A's presence.
13. DW shall not supervise A's contact with EW, and DW's son, J shall not have any access, or contact with A.

DW's plan

[324] Although M's placement with DW does raise some concerns for the court, including concerns about M's possible ongoing exposure to conflict while living

with DW, I find it is in M's best interests to be in DW's primary care and custody. Despite the risk, there is no conflict free option.

[325] However, DW must follow through with the terms to be included in the Order.

1. DW must ensure M attends counseling with EW if M's child psychologist feels it is in M's best interest. I would note that the MCS was supportive of EW participating in joint therapy sessions with M to repair M's relationship with EW.
2. DW must ensure M's Veith House visits with her mother are a positive experience;
3. DW must ensure J is not left alone with or left in a caregiving role with M;
4. DW must ensure M has time with her paternal family. That M's paternal grandmother, MW, and her paternal aunt are able to spend some quality time with M if they so desire.

[326] Although I have expressed some concerns, I am also confident DW has knowledge of M's needs, and is well equipped to be M's primary parent. I was impressed by DW's willingness to have M attend play therapy, and DW's willingness to engage in personal counseling. I was also impressed by DW's

concern for M's comfort, her physical development, and her safety, for example, ensuring concerns related to bowel movements, or "pallid breathing", were looked after.

[327] In March 2020, DW advised she had attended counseling regarding her relationship with EW. She advised that her therapist had recommended she "back away" and allow EW to make personal changes prior to engaging with EW. As noted previously, in January 2017, DW had indicated she would be willing to attend family counseling with EW but only if EW got the help she needed and was honest with herself. I hope EW does get some support, and that DW is able to attend therapy with EW to address outstanding issues.

[328] Given the length of time the MCS has been working with EW with little evidence EW has an awareness of her own needs and given M's presentation and DW's willingness to provide a long term home for M, I find it is in M's best interest to reside in DW's primary care and custody.

[329] DW must also ensure M's paternal grandmother, and aunt are able to spend some quality time with M, at a minimum, time every two months, if they so desire.

[330] Failure of DW to ensure the above noted requirements are met may be considered a change of circumstances which may require the court to reconsider M's custodial and care placement.

Supervised parenting time

[331] In *R.N. v. L.M.*, 2014 NSSC 396, Jollimore, J, stated the following regarding supervised access: Supervised access

[74] Like every other aspect of custody and access, whether access is to be supervised must be determined on the basis of the child's best interests. In *L.A.M.G. v. C.S.*, 2014 BCPC 172 at paragraph 35(c), Judge Woods provided an excellent review of considerations which he felt could "legitimately arise" when entertaining the possibility of a supervision order.

[332] Judge Woods stated:

[35] From those cases I have distilled the following principles:

- (a) Supervision orders are, as s. 59(3) clearly states, made so as to serve the best interests of children having regard to the considerations specified in family law legislation and not to serve other purposes;
- (b) Long term supervision orders are generally discouraged, but in some circumstances they can be justified as serving the best interests of children. In even rarer circumstances, supervision orders of indefinite duration can be justified in the same way;
- (c) Factors which can legitimately arise for consideration when a court entertains the possibility of making a supervision order—all of which demonstrably tie into the enumerated "best interests" considerations set out in s. 37(2)—include, but are not limited to, the following (in no particular order):
 - i. Children's general right to know and have relationships with both parents;
 - ii. Children's right to have the maximum amount of contact with both parents that is reasonable, having regard to all the circumstances;

- iii. The nature of the relationship and attachment between the children and the parent said to require supervision;
- iv. Any limitations that may constrain the ability of the parent said to require supervision to employ good parenting judgment and perform parenting functions competently;
- v. The level of commitment of the parent said to require supervision to the children;
- vi. The nature of the relationship between the parents and its impact on the children;
- vii. The need to protect the children from physical, sexual or emotional abuse;
- viii. Whether the children are being introduced or re-introduced into the life of a parent after a significant absence;
- ix. The existence of substance abuse issues for the parent said to require supervision;
- x. The existence of “clinical issues” for the parent said to require supervision;
- xi. A history of harassment, violence and other harmful behaviour directed toward the primary caregiver by the parent said to require supervision;
- xii. A history of parental alienation;
- xiii. Ongoing denigration of the primary caregiver by the parent said to require supervision;
- xiv. Evidence of abuse or neglect of the children by the parent said to require supervision; and
- xv. The wishes and preferences of the children themselves (mainly when they are older).

[333] In *Abdo*, 1993 CanLII 3124 (NS CA), Justice Pugsley wrote the Court of Appeal’s unanimous reasons and made clear that the burden of proof is on the parent seeking to restrict access to show that this is in the child’s best interests. In this case it is the MCS asking the court to ensure EW’s parenting time is supervised.

[334] I find EW does present with clinical issues and her time with both M and A should be supervised. The evidence to support this finding was provided by Dr. MP who testified at trial. I also rely on the representations of JB, who was contracted by the Agency in an attempt to provide EW with an opportunity to participate in appropriate therapeutic services prior to trial.

[335] On October 14, 2019, the Psychiatric Assessment Report prepared by Dr. MP, MD, FRCPC, in relation to EW, was completed. Dr. P found that EW met 5

out of 9 DSM-V criteria for a diagnosis of Borderline Personality Disorder. She also found that EW met the DSM-V criteria for Generalized Anxiety Disorder, Panic Disorder, and Attention Deficit Hyperactivity Disorder, hyperactive/impulsive type.

[336] Dr. P's recommendations for EW included the following:

1. work with a Trauma and Attachment specialist to address attachment style. Dialectical Behavioral Therapy (DBT) is indicated to treat Borderline Personality Disorder and would help her to control impulses and regulate her emotions.
2. In order to address her emotional dysregulation and irritability, initiation of a mood stabilizer Lamotrigine would be appropriate. Dr. P then made further recommendations regarding medication she suggested would assist EW.
3. Treatment of ADHD symptoms has to be initiated after EW is stabilized on Lamotrigine. The writer recommends starting EW on ...long acting psycho-stimulants, either Concerta, Vyvanse, or Biphentin. Then providing recommendations regarding doses.

[337] On October 22, 2019, EW stated she was going to book an appointment with her family doctor, and would like to take medication which is less strong than the medication recommended in her Psychiatric Assessment Report; she did not want to take an anti-psychotic medication.

[338] EW advised she did not want JM to send the Psychiatric Assessment Report to her doctor, and that she would obtain a copy and give it to her doctor, and her therapist. JM directed EW to obtain a referral from her doctor for Dialectical Behaviour Therapy (DBT), which was available through community mental health.

[339] As noted above, on December 17, 2020, JB, a therapist, advised LC that she requires her clients to have insight, and that it was her perception that EW “was not ready for counseling”. JB observed that EW presented with “pressured speech, and interruptions”. JB observed EW did not appear to have any insight, JB was of the opinion that EW is “concerned about what other people’s perceptions are”.

[340] JB noted that EW “would be suitable for psychiatric evaluation, and follow through with DBT skill building.” JB opined that EW’s presentation had indices of “some level of bipolar or borderline personality disorder”, and that there was no individual counseling that could happen between now, and the trial date in January 2021, that could help EW.

[341] I find it is in the children's best interest for all EW's parenting time to be supervised by Veith House, or a professional trained to supervise parenting time in high conflict situations. I find it is not in the children's best interest for DW or DH to supervise the children's time with EW.

[342] If EW wishes this court to review the finding that her parenting time must be supervised she must have the support of service providers who have read this decision, and have read Dr. MP's Psychiatric Assessment Report. This Court will not except feedback from any professionals who have not been provided with the above noted documents.

[343] The matter will not be reviewed before EW has attended appropriate therapeutic counseling consistently for at least six months or before EW has been referred to a psychiatrist who has considered what medication would best address EW's presenting problems.

[344] DH's counsel should draft the Order.

I reserve the right to make any final typographical corrections to this decision.

Cormier J.

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. E.W.*, 2021 NSSC 65

Date: 20210222

Docket: Hfx No. SFHCFSA-115658

Registry:Halifax

Between:

Minister of Community Services

Applicant

v.

E.W., D.H., D.W. , R.B.

Respondents

ERRATUM

Judge: The Honourable Justice Cindy G. Cormier
Heard: January 19, 20, 21, 2021 in Halifax, Nova Scotia
Counsel: Jean Webb, for the Applicant
EW, self-represented Respondent
Neil Robertson, for DH

Erratum:

Date of birth has been removed from paragraph 90.