

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. M.R., J.H., B.R.*, 2022 NSSC 181

Date: 20220617

Docket: FKCFSA No. 119488

Registry: Kentville

Between:

Minister of Community Services

Applicant

v.

M.R., J.H. B.R.

Respondents

Restriction on Publication: Pursuant to subsection 94(1) of the *Children and Family Services Act*, there is a ban on disclosing information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child. This decision complies with this restriction so that it can be published.

Judge: The Honourable Justice Jean M. Dewolfe

Heard: February 18, 2022, April 4, 2022 and April 5 2022, in
Kentville, Nova Scotia

Written Release: June 17, 2022

Counsel: Angela Swantee for the Minister of Community Services
Pavel Boubnov for the Respondent, M.R.
Maria Mikhailitchenko for the Respondent, B.R.
J. Walter Thompson for the Applicant, J.B.
J.H., not represented and not present

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Pursuant to subsection 94(1) of the Children and Family Services Act, there is a ban on disclosing information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child. This decision complies with this restriction so that it can be published. Section 94(1) provides:

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

By the Court:

[1] This is an application by the Minister of Community Services (“the Minister”) to terminate proceedings pursuant to the *Children and Family Services Act*, S.N.S. 1990, c. 5 (“the CFSA”), provided that the child, A., is placed in the care of J.B., pursuant to an order under the *Parenting and Support Act*, R.S.N.S. 1989, c. 160 (as amended) (“the PSA”). J.B. has cared for A., who is currently one and a half years of age, since September 2021 when he was placed in her care by the Minister, under a Non Party Supervision Order.

[2] M.R. is A.’s mother. B.R. is M.R.’s father and A.’s paternal grandfather. M.R. resides with B.R.

[3] J.H. has been identified as A.’s father, but he has refused to provide a DNA sample. M.R. alleges she was sexually assaulted by J.H. He did not participate in these proceedings or have access to the child.

[4] J.B. is a member of M.R. and B.R.’s extended family.

[5] M.R. and B.R. initially sought out J.B. as a placement for A., and had indicated their consent to A. being placed in her long-term care pursuant to the PSA. Their position changed in January 2022. M.R. and B.R. now seek to have A. returned to their joint care.

[6] J.B. has applied pursuant to the PSA for sole care and custody of A. with supervised access to M.R.

[7] The Minister's position is that A. will no longer be in need of protective services if he is placed in J.B.'s care pursuant to a PSA Order, and that if this was to occur the Minister would be willing to terminate the CFSA proceeding. The Minister requires supervised access for the Respondents, and J.B. is willing to facilitate this.

[8] Therefore, with the parties' consent, the Court heard the CFSA and PSA matters concurrently, with the evidence on the CFSA matter also being admitted on the PSA matter.

PROCEEDINGS

[9] In September 2020, A. was taken into care in a day after his birth. At the time, M.R. was 19 years of age, and lived at home with B.R. M.R indicated that she intended to parent A. with B.R.'s support, while continuing to reside with B.R.

[10] Interim Orders for temporary care and custody were granted on September 24, 2020 and October 19, 2020. On December 7, 2020, A. was found to be in need of protective services on the basis of S. 22 (2)(b)(g) and (k) of the CFSA. M.R. and B.R. took no position on this finding. At the Disposition stage on February 24,

2021, A. remained in the temporary care and custody of the Minister. This order was reviewed and continued two times.

[11] On September 14, 2021, M.R. and B.R. consented to A. being placed with J.B. On September 29, 2021, A. was placed with J.B. by way of a Non Party Supervision Order. M.R. and B.R. consented to this Order and its renewal on December 8, 2021.

[12] On November 24, 2021, the Agency filed its current Plan of Care, supporting the long-term placement of A. with J.B. pursuant to a PSA Order.

[13] On January 5, 2022, B.R. and M.R. advised that they no longer supported the placement with J.B., and sought placement of A. with them.

[14] The statutory timelines expired on February 24, 2022.

[15] The hearing took place on February 18, 2022, April 4, 2022 and April 5, 2022 with M.R. and B.R. attending in person, and other participants appearing via a hybrid of MS Teams and telephone appearances.

EVIDENCE

Minister's Evidence

Dr. Risk Kronfli

[16] Dr. Risk Kronfli prepared a psychiatric assessment with respect to B.R. dated January 6, 2021. Dr. Kronfli was qualified by consent as an expert in the field of psychiatry and the assessment and treatment of individuals with mental health disorders.

[17] Dr. Kronfli diagnosed B.R. with adult ADHD and cluster “B” personality traits, i.e. histrionity, impulsivity, lack of appreciation of the impact of his actions, or how he is perceived by others, as well as antisocial traits. He described histrionity as being overly dramatic, quick to present with extreme anger and then settling quickly, intending to provoke an effect as opposed to actual feeling. He testified that in his opinion, B.R. has no major psychiatric disorder and is not delusional, but he is prone to making exaggerated and inappropriate statements for effect, especially under stress. He testified that B.R. has poor problem-solving skills, is very impulsive, has limited social skills, and is very suspicious of others.

[18] In his report, Dr. Kronfli reported that B.R. had been diagnosed with depression and anxiety in 2017 but had refused to take medication.

[19] Dr. Kronfli recommended medication to address ADHD and dialectical behaviour therapy (“DBT”). He expressed his opinion that the probability of change for B.R. would be very low without treatment.

[20] Dr. Kronfli expressed his opinion that it would be challenging for B.R. to provide consistency and predictability for A. given his untreated ADHD, and even with treatment he would have to demonstrate functional implementation of these parenting strategies.

[21] On cross examination, Dr. Kronfli expressed his opinion that B.R. would not be able to appreciate risks to A., or provide M.R. with guidance and supervision in her care of A. Dr. Kronfli was concerned that his ADHD would lead B.R. to make poor decisions when overwhelmed or stressed, and that B.R.'s beliefs would interfere with M.R. and A. obtaining services in the future. This could affect A.'s need to grow and develop normally. He referred to the fact that at age 18, M.R. was cognitively delayed and lived with B.R.; however she did not know how she got pregnant. While M.R. recognized that she needed help, B.R. had prevented her from engaging in services because he believed that the Minister and community agencies were trying to steal and sell her baby. B.R. did not recognize the need for Agency involvement, and appeared to have no insight into the level of supervision and assistance M.R. would need. Given B.R.'s distrust of strangers and his intention to continue working, Dr. Kronfli questioned how B.R. could provide same.

Ian Smith

[22] Ian Smith, Registered Counselling Therapist, was qualified as an expert in the area of counselling and therapeutic treatment of adults including DBT. B.R. engaged in therapy with Mr. Smith in accordance with the recommendations of Dr. Kronfli. Mr. Smith testified that following three, one-hour sessions in April 2021, he recommended that therapy be suspended because B.R. had indicated that he saw no value in it. Mr. Smith noted that B.R. had significant trust issues with respect to the Minister which prevented him from meaningful engagement.

[23] Mr. Smith denied B.R.'s allegation that he had asked, "when was the last time you had sex with your daughter"?, and "where's the gun cabinet in your home"? He admitted asking how much alcohol B.R. drank. He denied that any social worker dictated specific questions to ask B.R.

Sheila Bower-Jacquard

[24] Sheila Bower-Jacquard, psychologist, was qualified to provide expert evidence in the field of psychology and in the conduct of psychological assessments, including cognitive assessments. She provided a report dated August 10, 2021 with respect to M.R. and was cross examined.

[25] She described M.R. as having a mild Intellectual Development Disorder, learning at a slower rate than others, with life skills which were behind her peers,

low problem-solving ability and an inability to understand risk. In particular, her “fluid reasoning”, i.e. the ability to draw conclusions and inferences from a situation and make appropriate decisions, was very poor. In addition, she has a very poor short-term memory which, when combined with other limitations, would make it challenging to parent a young child. Ms. Bower-Jacquard admitted it would be possible for M.R. to parent if she had extensive support.

Amanda Fitzpatrick

[26] Amanda Fitzpatrick, occupational therapist, was qualified to provide expert evidence in the field of occupational therapy and with respect to the assessment and treatment of individuals’ independent living skills and parenting skills. Ms. Fitzpatrick prepared an Independent Living Report with respect to M.R. in August 2021. She testified that M.R. found a two-hour assessment to be tiring, due to her intellectual disability. Ms. Fitzpatrick also noted that while preparation can overcome some scenarios, it is impossible to prepare for all eventualities. M.R. would have very little ability to problem solve for A. in new situations. She would need continual verbal prompts and cues as well as guidance regarding decision making. Ms. Fitzpatrick did not anticipate that this challenge would resolve over time. Also, if M.R. was tired, she was more likely to become frustrated.

[27] Ms. Fitzpatrick described M.R. as easily angered and lacking in emotional regulation and self-esteem. She also observed her to be distrustful of others and described her as a “concrete thinker”, eg. believing that people were “good” or “bad”. Ms. Fitzpatrick reported that M.R. told her she had had suicidal thoughts but had never developed a plan.

[28] Ms. Fitzpatrick testified that M.R. would need “fairly constant” supervision, and would not be able to be alone with A. for long periods of time. She agreed that M.R.’s support person would need to be able to recognize a problem, and if necessary reach out for and accept help.

Michelle Amos

[29] Michelle Amos was the intake social worker. She had interactions with M.R., B.R., J.H. and A. in September 2020. She filed the initial affidavit supporting the interim application, including the Minister’s history with M.R. and B.R.

[30] She denied calling A. a “rape baby”. She testified that M.R. said that her brother had called A. this.

[31] Ms. Amos recounted the involvement of Trina Earle and Emily Welton with the family between June 2020 to September 2020. This included a meeting on June

30, 2020 at the home of B.R. and M.R. Ms. Amos reported that M.R. became very upset during the meeting and ran crying to lie down with B.R. on a couch in the next room. Ms. Earle and Ms. Welton described M.R. as “spooning” B.R. with her hand covering his crotch.

[32] Ms. Amos met with M.R. at the hospital on the day before and the day of A.’s birth. She also spoke with B.R. the day before the birth. M.R. commented to Ms. Amos that she has memory retention issues and therefore B.R. makes all of her decisions for her. M.R. said she would do what she needed to do to keep A. However, B.R. refused to allow any assistance for M.R. B.R. told Ms. Amos that he worked part-time so he was at home a lot, and they did not need help.

[33] Prior to A.’s birth, Kings County Family Resource Centre had been providing support to M.R. On September 17, 2020, they had advised Ms. Amos that they were no longer willing to go to B.R.’s home. They reported that B.R. had talked about cutting people up with machetes in Ottawa, had said that he was jealous of the Portapique shooter, and boasted that he would protect his cat with his guns.

Beth Roberts

[34] Beth Roberts, family support worker, supervised numerous visits between M.R. and A. from September 2020 to the late fall of 2021, and provided M.R. with family support work. She described M.R. as being easily upset and frustrated if A. was fussy or crying (“typical infant behaviour”). M.R. also became frustrated if she felt rushed. On several occasions during visits M.R. cried and engaged in verbal “rants” which were difficult to follow.

[35] Ms. Roberts indicated that even after 14 months of supervised access and family support work, M.R.’s parenting skills did not improve, and that she still required extensive support. Ms. Roberts indicated that M.R. still needed assistance in reading A.’s cues, dressing, feeding, and changing him, and putting him down to sleep. She had difficulty problem solving and multi-tasking. She would therefore need more support than just supervision in order to care for A.

[36] Ms. Roberts described numerous examples of M.R.’s limitations with respect to care, learning new skills and providing cognitive stimulation. On one occasion she could not transition from using a diaper with pictures only on the front, to a diaper with pictures on the front and back (but with tabs only on the back). On another occasion she left A. alone on a change table. Ms. Roberts noted that on another occasion M.R. played with blocks herself instead of engaging A.

[37] Ms. Roberts reported that M.R. had referred to A. as a “rape baby” on a few occasions.

Lael Aucoin

[38] Lael Aucoin was the long-term social worker between September 2020 and February 2021. Ms. Aucoin described Agency interactions with the parties. She provided three affidavits, testified and was cross-examined.

[39] Ms. Aucoin testified that initially Ms. Parrish from Kings County Family Resource Centre had agreed to supervise a weekly visits for M.R. and A.

[40] In November 2020, Ms. Parrish stopped supervising visits as M.R. and B.R. did not appear to want anything to do with her organization.

[41] Ms. Aucoin noted that J. H. had originally agreed to participate in a DNA test but subsequently refused to do so.

[42] She also testified that M.R. started counselling with Sue Evans at Mental Heath and with Crystal Shanks-Tracey, but M.R. withdrew from both services. She told Ms. Aucoin that the counsellors did not understand and could not help her.

[43] Ms. Aucoin also said that B.R. had filed a complaint with the Premier’s office in November 2020 to report Kentville social workers for taking “26 babies

from their mothers in the past 30 days”, that he had described Agency employees as “criminals”, and alleged they got a “\$2,000 bonus” for getting a child adopted. B.R. was assured that these allegations were not true.

Jenna McCulley

[44] Jenna McCulley was the long-term protection worker for M.R. and B.R. for approximately six months until September 2021. She submitted two affidavits, testified and was cross-examined. She met B.R. once and described him as polite and cooperative.

Kathleen Archibald

[45] Kathleen Archibald was A’s child in care social worker and the parties’ long term social worker after September 2021. She identified the Agency’s respective Plans of Care dated September 15, 2021 and November 24, 2021. She also submitted three affidavits, testified, and was cross-examined.

[46] In her affidavit dated September 16, 2021, Ms. Archibald related the agreement of M.R. and B.R. to have J.B. and her partner take care of A. in the long term. B.R. agreed that he would not have access at that time, and discussions

occurred about transitioning M.R.'s access to J.B.'s home after A. was placed permanently in J.B.'s care.

[47] In her February 15, 2022 affidavit, Ms. Archibald described conflict regarding B.R.'s proposed access in December 2021, which he ultimately refused due to his belief that the Minister was going to try to set him up to be arrested.

[48] In January 2022, Ms. Archibald learned of an anonymous referral to C.P.S. regarding J.B., which referral was not investigated due to it being dated, not credible, and there had been no concerns noted regarding J.B.'s care of A.

[49] In January 2022, M.R. and B.R. changed their position, and opposed long-term placement of A. with J.B.

Respondents' Evidence

B.R.

[50] B.R. filed a Notice of Intention to Act on One's Own and an affidavit on December 20, 2021 after he discharged his first lawyer. He also filed an affidavit on February 22, 2022. He testified and was cross-examined.

[51] In his December 2021 affidavit, B.R. alleged the “Pregnancy Center” sold babies for “cash in envelopes” and that mothers were forced to sign adoption papers by Lael Aucoin.

[52] He alleged that Emily Welton and Trina Earle told things to the RCMP to “insight (*sic*) the RCMP into coming to my house with a shoot first ask questions later attitude”. He also alleged the only reason he was offered a December 14, 2021 visit with A. was for him to be arrested. He alleged Lael Aucoin tampered with his “psychology reports” to make him look mentally ill. He denied mental illness. He then stated:

“... I just keep uncovering crimes and mystery. I used RCMP, major crimes, CRA and the Department of Labour. I do hate cocaine dealer’s (*sic*) and murders but stay away from them. I sit back and observe their movements and when I’m sure I give the information to the RCMP to do their job...”.

[53] He alleged that Emily Welton’s mother was Janet Welton who worked for the Housing Authority and was in on the conspiracy.

[54] In his February 2022 affidavit, B.R. alleged that social workers created a “charge atmosphere” where M.R. was pressured to give her baby up for adoption. He alleged Trina Earle referred to the baby as a “rape baby”, and that the social workers grabbed M.R. by both arms “causing her a sprain”. He denied that M.R.

had touched his penis. He stated that he can care for A. in the same way he took care of his own children.

[55] On cross-examination, B.R. admitted he had not talked to M.R. about sex before her pregnancy, and that M.R. had not told him she had been raped prior to the pregnancy. He had been aware that M.R. and J.H. had been friends for approximately one year. He had observed J.H. coming out of M.R.'s bedroom on one occasion at 2 a.m.

[56] B.R. alleged that Lael Aucoin tampered with Ian Smith's counselling. He believed that she had told Ian Smith what questions to ask. He had heard Ian Smith's evidence in which he denied this, but he did not believe Mr. Smith was telling the truth.

[57] B.R. was questioned regarding comments he had made about being responsible for putting a bank loan officer in jail. His convoluted response involved being aware of information regarding a bank officer, mortgage appraisals and suicides, which he had passed on to police.

[58] He was also asked about his comment that he had been a "police informant" for 30 years. He admitted he was not a formal informant, and was not "very active"

right now, but essentially he had seen things and reported them to police over the last 30 years.

[59] When B.R. was asked why he thinks A. was taken in care, he accused a Kings County Family Resource Centre employee of buying babies from the Agency. He alleged she had \$15,000-\$20,000 in her purse at his home, and her job was to “spy and tell lies” to Lael Aucoin (who twisted everything) to get M.R.’s baby. He went on to say his sister’s baby was sold in Toronto by social workers 30 years ago, who stole her shoes so she could not leave the hospital, and counted the money right in front of her.

[60] He admitted that Kim Heisler had obtained a peace bond against him after a rental dispute. He also admitted that he does not get along with his sister, and that their arguments included swearing but not yelling.

[61] B.R. testified that he had been a single parent to M.R. and J.R. for 11 years. However, he also testified that his children were teenagers when his wife left.

[62] He has not taken the medication Dr. Kronfli recommended to treat his ADHD.

[63] B.R. currently works eight hours per week, but may work more in the future.

M.R.

[64] M.R. submitted an affidavit, testified and was cross-examined.

[65] In her affidavit, M.R. testified that she is 20 years of age, and never consented to sexual activity with J.H. She lives with B.R. and J.R. in an apartment, and has a good relationship with them. She described B.R. as a “great father”, who has been supportive and hard working. On cross examination, she described her dad as “awesome” and a “sweet guy”. She believes that a lot of people do not think he is nice, but that this is “not fair”.

[66] M.R. alleged that on June 30, 2020, social workers Emily Welton and Trina Earle pressured her to give her unborn child up for adoption, refused to allow her to have B.R. present during their meeting, and grabbed her arms and tried to drag her to the door.

[67] M.R. also alleged that Michelle Amos’ description of the meeting on June 30, 2020 had “no air of reality”. She denied that she touched her father’s crotch.

[68] M.R. testified that contrary to what “the social workers are saying”, she knows how to care for A., and stated that B.R. will assist her. She is currently not working but will find daycare if needed in the future.

[69] She attached photos of her home which show a clean, well organized 3-bedroom apartment.

[70] On cross-examination, M.R. recalled that J.H. had come out of her bedroom one evening, and she had been sleeping and did not know what happened. She found out she had been sexually assaulted after discovering she was pregnant during an ultrasound on June 15, 2020. She alleged she was “tricked” into getting the ultrasound.

[71] M.R. denied telling Amanda Fitzgerald that she had suicidal thoughts.

[72] M.R. stated that A. was taken into care because of her disability.

[73] M.R. testified that she attended counselling with Crystal Shanks-Tracey on three occasions but it did not help so she stopped. She also stopped seeing Sue Evans as she could not see the point in it.

[74] She admitted A. was doing “good” in J.B.’s care.

Terrance Ward

[75] Terrance Ward provided an affidavit and was cross-examined. He is a retired teacher who knew B.R. as a student, and later as his chimney sweep. He testified that B.R. has acted appropriately when in contact with Mr. Ward, was not involved

with alcohol, drugs or violent actions during his school years, and was a trustworthy tradesman. However, he knew nothing about B.R.'s home or parenting except he had occasionally seen B.R. with his children and they appeared to get along well.

J.R.

[76] J.R., the son of B.R. and brother of M.R., provided an affidavit and was cross-examined. He lives with M.R. and B.R. and is a full-time student at Nova Scotia Community College. He described his home as peaceful and described his father in positive terms. He testified that B.R. always "behaves appropriately" and is a hard worker.

A. D.

[77] A.D. provided an affidavit and was cross-examined. She is M.R.'s maternal Aunt. She testified that B.R. was a good father and M.R. was a great mother. She talks to M.R. on the phone most days. She admitted she has only seen videos of A., and had never seen M.R. parent A.

M.E.R.

[78] M.E.R., M.R.'s half-sister, is B.R.'s daughter by an earlier relationship. She provided an affidavit which was admitted by consent. M.E.R. lived with the family for nine months in 2012, and visited most years. She described B.R. as being patient, supportive, motivating, and a good communicator, with a calm demeanor.

PSA Application

J.B.

[79] J.B. provided an affidavit which was admitted by consent. She is a distant cousin of B.R. and grew up as his neighbour. She has known M.R. all her life. She stated, "we share the same cultural, linguistic, religious and spiritual upbringing and heritage. They are all family to me."

[80] She testified that she is capable of caring for A. and has become very attached to him. She recognizes that M.R. and B.R. resent her having custody and while she is open to access by M.R., she is concerned as to the stress this may cause. Therefore, she seeks to have discretion as to access.

Rebuttal Evidence

Emily Welton

[81] Emily Welton is an intake social worker employed by the Minister. She was called as a rebuttal witness to the testimony of M.R. and B.R.

[82] Ms. Welton testified that she first met with M.R. and B.R. in June 2020 shortly after M.R. discovered she was pregnant. She denied pressuring M.R. to put A. up for adoption but did discuss M.R.'s options with her. She denied calling M.R.'s unborn baby a "rape baby". She denied grabbing M.R. by the arms and dragging her anywhere. She denied that she has sold babies, arranged for anyone to buy babies or forced adoption of babies.

[83] She denied that her mother worked for the Housing Authority or was called Janet Welton.

[84] Ms. Welton confirmed Michelle Amos' description of interactions between her, Trina Earle, M.R. and B.R. between June-September 2020.

[85] On cross-examination, Ms. Welton denied that she told M.R. that she was not able to care for a baby. She recalled that M.R. became upset during the June 30, 2020 meeting and ran crying to B.R. who was in another room.

[86] Ms. Welton denied that she or Ms. Earle grabbed M.R.'s arm.

[87] Ms. Welton also recalled that during the June 30, 2020 meeting, B.R., who was in another room, could overhear their conversation and answered many questions for M.R.

Trina Earle

[88] Trina Earle was also called as a rebuttal witness. She was an intake case manager for the Minister in 2020. She attended the June 30, 2020 meeting with Ms. Welton. She denied pressuring M.R. to have her baby placed for adoption, grabbing M.R.'s arm and dragging her, selling a baby, arranging for anyone to buy a baby, referring to A. as a "rape baby", or telling M.R. that no mother would want a "rape baby". She adopted those portions of Michelle Amos' affidavit which described her participation in the file between June to September 2020.

ISSUES

[89] The issues are:

1. Would the child A. be in need of protective services pursuant to S. 22(2) of the CFSA if placed with M.R. and B.R.?
2. If so, would it be in A.'s best interests to be placed with J.B. pursuant to the PSA.?

LAW

CFSA

[90] Pursuant to S. 46(4) of the CFSA the Court is directed as follows:

- (4) Before making an order pursuant to subsection (5), the court shall consider
 - (a) whether the circumstances have changed since the previous disposition order was made;
 - (b) whether the plan for the child's care that the court applied in its decision is being carried out;
 - (c) what is the least intrusive alternative that is in the child's best interests; and
 - (d) whether the requirements of subsection (6) have been met.

[91] The Minister must prove on the balance of probabilities that the child continues to be a child in need of protection pursuant to S. 22(2) of the CFSA.

[92] The Minister relies on subsections (b), (g), and (k) of s. 22(2) which state:

- (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);
- (g) there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse;
- (k) there is a substantial risk that the child will experience neglect by a parent or guardian of the child, and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the harm;

[93] Subparagraph (a) provides:

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

[94] The CFSA defines “substantial risk” to mean a “real chance” of danger that is apparent on the evidence: S. 22 (1).

[95] When assessing risk of harm, the question is whether adequate parenting can be achieved within the statutory timeframe: *J. F. v. Children's Aid Society of Cape Breton-Victoria*, 2005 NSCA 101, at para 18.

[96] S. 3(1)(la) and s. 3(1)(p) of the CFSA defines “emotional abuse” and “neglect” as follows:

3 (1) In this Act:

(la) “emotional abuse” means acts that seriously interfere with a child’s healthy development, emotional functioning and attachment to others such as

(i) rejection,

(ii) isolation, including depriving the child from normal social interactions,

(iii) deprivation of affection or cognitive stimulation,

(iv) inappropriate criticism, humiliation or expectations of or threats or accusations toward the child, or

(v) any other similar acts;

...

(p) “neglect” means the chronic and serious failure to provide to the child

(i) adequate food, clothing or shelter,

(ii) adequate supervision,

(iii) affection or cognitive stimulation, or

(iv) any other similar failure to provide;

[97] Pursuant to S. 42 (2), the Court must consider less intrusive alternatives, unless they would be inadequate to protect the child. The Court must also consider whether it is possible to place the child with family: S. 42(3).

[98] Family placement plans must be viewed in the context of the best interests of the child: *Family and Children's Services of Kings County. v. B.D.* [1999] N.S.J. 220 (C.A.).

[99] The Court is required to make a disposition that is in the child's best interest: S. 42(1). This requirement is the paramount consideration: section 2(2). The factors which the Court must address in reaching this determination are set out at S. 3(2) of the CFSA which provides as follows:

(2) Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

- (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;
- (b) the child's relationships with relatives;
- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (d) the bonding that exists between the child and the child's parent or guardian;
- (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;

- (ga) the child's sexual orientation, gender identity and gender expression;
- (h) the religious faith, if any, in which the child is being raised;
- (i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- (j) the child's views and wishes, if they can be reasonably ascertained;
- (k) the effect on the child of delay in the disposition of the case;
- (l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;
- (m) the degree of risk, if any, that justified the finding that the child is in need of protective services;
- (n) any other relevant circumstances.

[100] Past parenting history is relevant to the present circumstances: *Nova Scotia (Minister of Community Services) v. L. (S.E.)*, 2000 NSCA 55 (CanLII).

[101] The CFSA imposes statutory timelines within which applications must be heard: S. 45(2).

PSA

[102] S. 18 of the PSA provides the Court with jurisdiction to make parenting orders. The child's best interest is the paramount consideration: 18(5). The PSA lists a number of factors a Court must consider in assessing best interests: S. 18(6)(7)(8). These factors, which are relevant in this case, are essentially the same as set out in S. 3(2) of the CFSA.

ANALYSIS AND DECISION

[103] Where the evidence of the Minister and B.R. and M.R. conflict I accept the Minister's evidence. B.R. has a tendency to exaggerate as identified by Dr. Kronfli. This was evidenced in his cross-examination and in his December 2021 affidavit.

[104] The Court finds that the Minister has proven on a balance of probabilities that A. continues to be in need of protection as defined by S. 22(2)(b) and (k) of the CFSA.

S. 22 (2)(b) of the CFSA – Risk of Physical Harm

[105] The Court finds that there is a substantial risk that the child will suffer physical harm if he is placed in the care of M.R. and B.R., due to a lack of: (i) parenting capacity; (ii) support network/supervision; and (iii) insight.

(i) Lack of Parenting Capacity

[106] The Court accepts Sheila Bower-Jacquard's opinion that M.R. struggles to learn new concepts and needs to receive small amounts of information at a time. This accords with Beth Robert's observations that M.R. must practice skills many times before she learns them, and that M.R. easily becomes overwhelmed, tired and frustrated.

[107] The Court accepts Beth Roberts' evidence that M.R. participated in family support work for over a year, but showed virtually no progress in her parenting ability. In particular, M.R. is unable to react appropriately to new situations and make decisions. This is a day-to-day challenge.

[108] During her supervised access, Ms. Roberts was required to keep very close watch on M.R. , who is easily overwhelmed and unable to adapt to even minor challenges (eg. the diaper issue).

[109] The Court accepts the undisputed evidence of Sheila Bower-Jacquard and Amanda Fitzgerald that M.R. cannot adequately parent A. without significant supports and supervision. The Court accepts Amanda Fitzgerald's opinion that this supervision must be by someone who can support her parenting, recognize a problem, and reach out for, and accept help as necessary.

(ii) Lack of Support Network/Supervision

[110] The Court accepts Amanda Fitzgerald's evidence that M.R. finds it difficult to trust people, and will only trust after a significant period of relationship building.

[111] M.R. and B.R. provided no evidence as to an actual plan for supervision and parenting support.

[112] B.R.'s position is that he was able to raise M.R. and J.R. by himself and he can therefore adequately parent A. as well. M.R.'s evidence is that B.R. will assist her as needed in parenting A., for example, driving her places. However, M.R. and B.R. provided no evidence as to an actual plan for supervision and parenting support. No other supports or supervisors were identified except for J.R. who attends school full-time. Indeed their evidence is that M.R. does not need supervision. Therefore, the Court shares the Minister's concern that A. would be left alone with M.R. for significant periods of time, eg. when B.R. works.

[113] Even if B.R. is available, the Court has significant concerns as to B.R.'s ability to supervise and assist M.R. with parenting.

[114] B.R. failed to follow through in therapy with Ian Smith and to take the medication recommended by Dr. Kronfli. The Court accepts Dr. Kronfli's opinion that without treatment B.R. would find it challenging to provide consistency and predictability for A., or appreciate risks to him. He also would not provide M.R. with adequate guidance and supervision in her care of A., and his untreated ADHD would lead B.R. to make poor decisions.

[115] While his children refer to B.R. in positive terms, M.R. admits B.R. has problems getting along with a lot of people, but blames them for this, saying it is “unfair”.

[116] J.R, who was raised by B.R. for the past 11 years, appears to be a well-adjusted, productive individual. However, there is no evidence as to B.R.’s involvement in his parenting during his early years. B.R. was not a sole parent to M.R. and J.R. until they were in their early teens.

[117] B.R.’s care of M.R. has not been adequate. He failed to educate her as to sex and pregnancy, so that she at the age of 18 she was unaware of how she got pregnant. B.R. has sought out no services or supports for M.R., who clearly has emotional regulation issues and anxiety.

[118] B.R.’s beliefs have interfered with M.R. obtaining necessary services and supports; upon learning that she was pregnant she was initially open to services; however, she quickly adopted B.R.’s beliefs that the people who were trying to help her were trying to steal and sell her baby. The Court finds that B.R.’s paranoid, anti-social beliefs will lead to isolation for M.R. and A. This will affect A.’s ability to grow and develop normally.

iii. Lack of Insight

[119] The evidence of B.R. and M.R. was that M.R. does not need supervision.

B.R.'s commented to Michelle Amos that he worked part time and was home "a lot", and therefore they did not need any help. B.R. had unrealistic expectations of M.R.'s parenting abilities. He has refused to accept the expert opinions as to M.R.'s limitations. He has taken the position that he will be an adequate support for M.R., despite the limitations and issues raised by Dr. Kronfli's assessment.

[120] M.R. cannot appreciate safety risks or navigate new challenges. She is naïve and vulnerable. Her only continual support, B.R., is impulsive and anti-social. B.R. makes all of M.R.'s decisions. They are socially isolated. M.R.'s cognitive limits and B.R.'s untreated ADHD results in a lack of insight and leads them to make poor decisions. This places A. at substantial risk of physical harm.

S. 22 (2)(k) of the CFSA – Risk of neglect

[121] The Court finds that there is a substantial risk that if A. is placed with M.R. and B.R., he will experience chronic and serious neglect as defined by CFSA S. 3(1)(p)(ii) inadequate supervision and CFSA S. 3(1)(p)(iii)- inadequate cognitive stimulation, and that they will refuse to provide services or treatment to remedy the harm.

S. 3(1)(p)(ii) - Inadequate Supervision

[122] B.R. expressed no concerns about leaving M.R. alone with A. He intends to continue and perhaps expand his work hours and has no alternate supervision plan. B.R. and M.R. have virtually no outside supports and do not trust others. The Court finds that M.R. and B.R. lack insight into the need for supervision, and that without treatment as recommended by Dr. Kronfli, B.R.'s supervision will be inadequate.

S. 3(1)(p)(iii) - Inadequate Cognitive Stimulation

[123] It is clear from the evidence of Sheila Bower-Jacquard and Beth Roberts that due to her own cognitive limitations, M.R. is unable to provide A. with adequate cognitive stimulation. This was evident in Beth Roberts' observations as well (eg. the blocks incident).

[124] B.R. and M.R. are unlikely to reach out to outside supports for cognitive stimulation. A. is a very young child and as such this need is crucial.

[125] The Court therefore finds that placement with M.R. and B.R.. will place A. at a substantial risk of chronic and serious neglect.

S. 22 (2)(g) of the CFSA – Risk of Emotional Harm

[126] The Minister has presented evidence with respect to the risk of emotional harm to A. if placed in the care of M.R. and B.R., eg. evidence that M.R. and J.R. have called A. a “rape baby”. The Court accepts that B.R. holds antisocial views and may isolate the child from normal social interaction. However, the Court finds that there is insufficient evidence to make a finding pursuant to this ground.

Summary

[127] In summary, M.R. cannot care for herself, let alone a child. Her reliance on B.R. with minimal outside supports puts A. at risk of physical harm and neglect. The evidence is that supervision by B.R., given his poor decision making, anti-social personality, impulsivity and untreated ADHD does not alleviate the risk to A., but instead, increases the risks to A.

S. 42 of the CFSA

[128] Pursuant to S. 42(2) of the CFSA, I find that all reasonable services have been offered to the parties, which have either been refused; or have failed to remedy the substantial risk to A.

[129] The Minister provided 3 key assessments early in the proceeding: Amanda Fitzgerald’s Independent Living Assessment of M.R.; Sheila Bower-Jacquard’s

psychological assessment of M.R; and Dr. Risk Kronfli's psychiatric assessment of B.R. All were completed by early 2021. M.R. and B.R. chose not to follow through on most of the recommendations set out in these assessments.

[130] By placing A. with J.B., the Minister has met its obligation pursuant to S. 42(3) of the CFSA to act in the least intrusive way by placing A. with a member of his extended family. Less intrusive alternatives were attempted and have failed due to M.R. and B.R. refusing to participate in services designed to mitigate the risk to A.

PSA

[131] J.B. is a capable and protective caregiver. This is implicit by the fact that the Respondents initially placed A. in her care, and was acknowledged by M.R. in her testimony. The Minister has observed no concerns as to J.B.'s care of A. and he is doing well. I accept J.B.'s testimony that she and A. have a close bond.

[132] I find that J.B. has the ability to provide A. with adequate care, and that it is in his best interests that he be placed in J.B.'s care pursuant to a PSA Order.

[133] M.R. and B.R. will have such supervised contact with A. as J.B. determines to be in A.'s best interests. The Minister shall be provided with notice as to any proposed changes in A's care, or any future court applications regarding M.R.'s

contact. M.R. shall not criticize J.B. or speak negatively of her, her family, or the Minister in A.'s presence. M.R. may send cards, gifts and photos to A. J.B. shall provide reports to M.R. on or before July 1 of each year including updates on A.'s health, development and education, as well as photos.

[134] Having made the above PSA order, the Court finds that A. is no longer in need of protective services. Therefore, the CFSA proceeding will terminate.

[135] Counsel for the Minister will prepare the CFSA Termination Order. Counsel for J.B. will prepare the PSA Order.

Dewolfe, J.