

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v CT*, 2022 NSSC 188

Date: 20220704

Docket: SFHCFSa No. 120636

Registry: Halifax

Between:

Minister of Community Services

Applicant

v

CT

Respondent

Judge: The Honourable Justice Theresa M. Forgeron

Heard: April 11, 12, 13, 14, 21 and 22, 2022, in Halifax, Nova Scotia

Decision: July 4, 2022

Counsel: Kate Dewey and Amanda Dillman for the Applicant
Peter Duke for the Respondent, CT

Restriction on Publication: Restriction on Publication

Pursuant to subsection 94(1) of the *Children and Family Services Act*, S.N.S. 1990, c. 5, 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.

By the Court:

Introduction

[1] This decision concerns two children – CoT who is nine and QT who is three. Both children have special needs. The oldest child presents with learning disorders, while the second child has spinal muscular atrophy (SMA). The second child is followed by a multitude of specialists at the IWK.

[2] Following the death of the children’s mother, MH, child protection concerns were reported to the Minister of Community Services. After investigating, the Minister applied for and received a non-party supervision order, placing the children in the care of a maternal aunt and uncle. After this placement broke down, the children were placed in the Minister’s temporary care and custody. Their foster placements have remained stable since the children were placed in care.

[3] At this time, the Minister seeks a permanent care order based on a substantial risk of physical harm, emotional abuse, and neglect. The Minister states that the father is unable to properly care for the children, noting that he refuses to get vaccinated or to wear a mask despite the opinion of the second child’s treating physician. In addition, the Minister states that the father refused to participate in services and only recently started to engage in trauma counselling. As a result, the father has neither meaningfully addressed his own mental health issues nor his inadequate parenting skills. Therefore, from the Minister’s perspective, the father cannot meet the children’s complex medical and emotional needs.

[4] In contrast, the children’s father, CT, wants his sons returned to him. He denies the protection allegations. He states that the Minister did not properly investigate or manage his family’s case for the following reasons:

- The Minister failed to differentiate between true protection issues and the symptoms of grief that he and the children experienced after the unexpected and sudden death of MH and his transition to sole primary care provider.
- The Minister did not provide trauma informed services even though he advised the Minister that he experienced trauma and abuse as a former child-in-care and even though he and the children were grieving.

- The Minister discounted the support that he receives from his close friends, two of whom testified. His support network is reliable, dependable, and committed to him and the children. The Minister unjustifiably discounted his support network because the Minister disagrees with their beliefs on individual rights, including the right to make decisions about vaccinations, their political views, and social activism. The Minister cannot rely on political beliefs as a basis for protection determinations.
- The Minister did not properly assess his commitment to therapeutic counselling to address issues of trauma and grief. With the help of his support network, the father is actively engaging in therapy with the Anxiety and Trauma Clinic of Nova Scotia, as confirmed by his therapist, Krystle Annand.
- The Minister inappropriately relied on hearsay referral reports that he has cognitive impairments. Although he has dysgraphia, this condition does not impair his ability to read, spell, speak, or comprehend. The father is frustrated that his dysgraphia diagnosis was misconstrued. No direct evidence was led that proved that the father was unable to clean, keep food stocked, budget, or was otherwise incapable of parenting. All such claims were based on unreliable hearsay.

[5] Given the parties' divergent views, a contested hearing was scheduled to determine the outstanding protection issues.

Issues

[6] The following three issues will be addressed in this decision:

- What operating legal principles inform my analysis?
- Are the children in need of protection?
- Should a permanent care and custody order issue even though the statutory timeline had not expired?

Background

[7] Before addressing the issues, I will review the historical background to provide context for my decision.

Family Life before Minister's Involvement

[8] The father and mother lived together for about 11 years. Their first son was born in November 2012 and their second child was born in May 2019. Although the parents shared some parenting chores, the mother was primarily responsible for the children's medical care, including managing the complex medical needs and appointments for their youngest son. In addition, the mother was the sole income earner for the family and assumed control over the family's finances.

[9] The father was also involved in the children's care. He did not work because of a medical condition, osteomyelitis, which limits his ability to stand for extended periods. The father cared for one or both of the children while the mother was working or at appointments.

Mother's Unexpected Death

[10] On November 20, 2020, life for this family irrevocably changed. The mother suddenly became extremely ill. The father helped her to the bathroom and then to a bedroom. The mother rested on the floor, hoping that her symptoms would improve. At times, the mother screamed because she was in agony. Around suppertime, the father asked the older son to wake the mother so that they could eat together. The child couldn't wake the mother. Neither could the father. The father called 911. It was too late. The mother died.

Referrals

[11] After the mother's death, the Minister began to receive referrals that the father wasn't able to care for the children. An investigation was conducted. On December 29, 2020, the Minister initiated proceedings alleging protection concerns based on s. 22(2)(b), (g), (j), and (k) of the *Children and Family Service Act*, SNS 1990, c 5.

Interim Proceedings

[12] Interim hearings were held on January 6 and 25, 2021. Each resulted in an interim order placing the children in the care of the maternal aunt and uncle, with parenting time access to the father.

[13] On February 3, 2021, the family placement broke down. A variation hearing, held on February 10, 2021, resulted in the children being placed in the care of the Minister. Although the children were placed in two separate foster homes, they

continue to have contact with each other. The children have done extremely well while in foster care.

Protection Hearing

[14] On March 25, 2021, a protection hearing was held. A consent order confirmed a protection finding under s. 22(2)(g) of the *Act*, with the usual rights and reservations. The father was represented by counsel at the time. The children's placement did not change.

Plan of Care and Disposition Hearing

[15] On April 16, 2021, the Minister finalized the agency's plan of care. The plan identified three protection risks that the father needed to resolve – mental health concerns, inadequate parenting skills, and physical neglect. To that end, the father was to engage with the following services:

- Mental health assessment and mental health treatment.
- Individual counselling.
- Regular check-ins with the protection social worker.
- Parenting skills instruction with a family support worker.
- Education and skill development with the Mulgrave Park Parenting Journey Program.

[16] During the disposition hearing held on June 18, 2021, a temporary care order issued which continued the children's foster placements and mandated services for the children. Issues surrounding services for the father were deferred because the father objected to agency-based services. The father did not trust the Minister's office because of his own experiences as a child-in-care. The father said he had experienced abuse and trauma. The father also questioned the social workers' current interaction with him; he said he was being retraumatized.

[17] In an attempt to have the father engage with the process, I reviewed the timelines and expectations of the *CFSA* proceedings. I directed that counsel for the Minister write to the father's counsel to outline the specific services sought and the goals to be achieved with each service provider. Counsel were also to identify if any community-based services could be accessed in a timely fashion. Counsel

were to report back to the court about their progress. I ordered a quick turn around for the next review hearing.

Review Hearings and Father's Refusal To Participate

[18] A review hearing was held on August 3, 2021. The father did not attend the hearing, although his counsel was present. The temporary care order was renewed. In addition, services and access issues were discussed. The Minister wanted the father to participate in a psychological assessment, counselling, and family support work. The Minister advised that the father refused to communicate with agency social workers.

[19] For her part, the father's counsel said that she received the Minister's letter outlining the requested services along with anticipated therapeutic goals. Counsel advised that the father refused to participate in services. Further, the father was no longer communicating with counsel.

[20] On October 1, 2021, the second review hearing was held. The father did not attend, although his counsel was present, but without instructions. The temporary care order was renewed, along with an order for the father to immediately remove all social media posts about this proceeding. The Minister also stated her intention to proceed with a permanent care hearing given the father's refusals to participate in services or to exercise access. I confirmed that such a hearing would be in-person. Dates were assigned.

[21] The father attended the third review hearing held on November 25, 2021; he was now self-represented. I granted permission for a friend to speak on his behalf. The friend questioned the court's authority and stated that no consent to this or any unlawful proceeding was given. The friend said the father intended to remain silent. The father then confirmed that he, a man under the father almighty, gave no consent. In response, the Minister confirmed her intention to renew the temporary care order and to proceed with a permanent care hearing on the scheduled dates of April 11, 12, 13, 14, 21, and 22, 2022. I granted the temporary care order and advised the father to contact the worker if he wanted to participate in services.

Fourth Review Hearing and Father's Change of Position

[22] On February 4, 2022, the fourth review hearing was held. The Minister's position remained unchanged. The father attended with another friend who spoke on his behalf. The friend said that the father was hoping to get a lawyer, was

arranging to participate in counselling for trauma, and wanted the court to be aware of the father's support group. I renewed the temporary care order. I also reviewed outstanding services, child protection timelines, and plans of care.

[23] The next appearance was held on March 4, 2022. Filing deadlines were assigned for the permanent care hearing. A settlement conference was scheduled because the father had secured counsel. Unfortunately, the subsequent settlement conference did not resolve the issues.

[24] Before discussing the permanent care hearing, I will review the children's special needs and the father's exercise of access.

Children's Specialized Health and Social Welfare Needs

[25] The younger child is treated at the IWK for his diagnosed neuromuscular disorder. He participates in programs from the IWK Feeding Team, Chest Clinic, Seating Clinic, occupational therapy, recreation therapy, and physiotherapy. The child uses a wheelchair and will require intensive treatment for the rest of his life. The child's medical needs and treatment are complex and require significant resources of time and personal commitment.

[26] Dr. Jordan Sheriko is the younger child's treating physician. Dr. Sheriko states that the younger child is at a high risk of contracting COVID. If he does, he would likely suffer serious health consequences. Dr. Sheriko recommended that individuals who come into contact with the child take extra precautions, including getting vaccinated and wearing a mask.

[27] The older child also participates in services. He participates in physiotherapy at the IWK and sees a private speech language pathologist. He also receives counselling from Wayne Hollett, who advised of the child's significant progress since being taken into care and of the child's wish to remain at his current foster home. The child also participated in occupational therapy at the IWK and may soon resume that service because of ongoing balance issues.

[28] In addition, the older child completed a psychoeducational assessment. The psychologist, Liza Gabriel, discussed the child's profile, finding symptoms of a learning disorder. She noted that the child performed significantly below expected on standardized measures for basic reading, spelling, oral reading fluency, reading comprehension, sentence building, mathematics, math fluency, and listening comprehension skills. A final diagnosis was not possible because of COVID shut-

downs and the child's trauma history. A further assessment was recommended after the child's circumstances stabilized. Ms. Gabriel underscored the importance of a stable home and supports for the child's continued progress.

[29] Further, the older child also receives educational supports at school as he is assigned an EPA and receives services from a resource teacher, school psychologist, and guidance counsellor.

The Father's Access

[30] The father did not exercise parenting time access between July 2021 and April 4, 2022. In-person access was initially arranged but the father wouldn't wear a mask and refused to discuss his vaccination status. The father did not produce a medical exemption. The father refused to wear a face shield in lieu of a mask. In addition, because the father would not communicate with agency workers, virtual access could not be arranged.

[31] On January 24, 2022, the older child's counsellor stated that contact with the father would likely cause the child to experience confusion and distress, and that clinical intervention following access would be in the child's best interests. If access were to occur, supervision would be appropriate.

[32] The Minister placed the father's access on hold because the Minister was concerned about its appropriateness. The father refused to mask. The father refused to connect with agency social workers. The father refused all services. In addition, the Minister questioned the stability of the father's mental health because of his erratic and aggressive behaviours towards agency workers.

[33] The father did, however, exercise one additional access visit that was arranged during the settlement conference. A virtual, supervised access visit took place between the father and the older child just prior to the permanent care hearing.

Permanent Care Trial

[34] The permanent care trial was held on the appointed dates. The hearing was in-person. Given the nature of the proceeding, I permitted witnesses who were not vaccinated and who could not or would not mask to testify in person. The following witnesses gave evidence: the child's counsellor, Wayne Hollett; Agency social worker, Jessica Goswell; Agency social worker, Megan Turetzek-Windsor; Agency supervisor social worker, Ruth Jewers; Agency social worker, Katie

Brown; the father; the father’s counsellor, Krystle Annand; the father’s friend, GG; and the father’s friend, AG. In addition, business records from the IWK, the Halifax Regional Police, and case recordings, together with the expert evidence of Erica Gallant, Liza Gabriel, and Dr. Jordan Sheriko were entered by consent.

[35] I also had the benefit of reviewing the excellent written and oral submissions provided by counsel. The parties were represented by lawyers who were informed, capable, and professional.

Analysis

[36] **What operating legal principles inform my analysis?**

[37] A permanent care decision engages several sections of the *CFSA* as well as principles discussed in case law. It may be helpful to the parties for me to provide an overview of the main operating principles guiding my decision.

Evidentiary Principles

[38] First, the Minister bears the burden of proving that a permanent care order should issue. This is a civil proceeding which requires proof on the balance of probabilities. There is no presumption of innocence in civil cases: *FH v McDougall*, 2008 SCC 53, para 42. To reach a factual conclusion in this civil case, I must scrutinize the evidence with care to decide whether it is more likely than not that an event occurred. I must determine whether the evidence is sufficiently clear, convincing, and cogent to satisfy the balance of probabilities test: *McDougall*, paras 44 to 46. There is no heightened burden on the Minister in child protection proceedings: *Nova Scotia (Community Services) v CKZ*, 2016 NSCA 61, para 53.

[39] Second, in making credibility findings, I apply the law set out in *Baker-Warren v. Denault*, 2009 NSSC 59, as approved in *Gill v. Hurst*, 2011 NSCA 100. In addition, I make inferences in keeping with the comments of Saunders JA in *Jacques Home Town Dry Cleaners v Nova Scotia (Attorney General)*, 2013 NSCA 4.

[40] Third, I have examined past parenting history. Although “[t]here is no legal principle that history is destiny”, past parenting is relevant, as it may signal “the expectation of risk”: *SAD v Nova Scotia (Community Services)*, 2014 NSCA 77, para 82. The court is concerned with probabilities, not possibilities. Therefore, where past parenting history aids in the determination of future probabilities, it is

admissible, germane, and relevant: *Nova Scotia (Community Services) v JM*, 2016 NSSC 80, para 86.

Legislative Focus and Approach

[41] Fourth, I am directed to consider the threefold purposes of the *Act*, which are to promote the integrity of the family, to protect children from harm, and to ensure the children's best interests. However, in my decision, I must focus on the *Act*'s paramount consideration, which is noted in s. 2(2) as the children's best interests.

[42] Fifth, I must apply a child-centered approach in keeping with the best interests principle as defined in s. 3(2) of the *Act*. This definition is multifaceted. It directs me to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, and social developmental needs, and those associated with risk of harm. In particular, in this case, I am mindful of the fragile and complex health needs of the younger child, as well as the special needs of the older child.

Protection Grounds

[43] Sixth, I must examine the protection grounds upon which the Minister relies in support of a permanent care order. In this case, the Minister relies on s. 22 (2) (b), (g), (j), and (k) of the *Act*. All but s. 22 (j) are based on a substantial risk. Substantial risk is defined in s. 22(1) as meaning a "... a real chance of danger that is apparent on the evidence." The Minister need only prove that there is a real chance that future emotional abuse, physical harm, or neglect will occur, and not that future abuse, harm or neglect will actually occur: *MJB v Family and Children's Services of Kings County*, 2008 NSCA 64, para 77.

Assessment of Ongoing Protection Risks

[44] Seventh, s. 46 of the *Act*, together with the *Catholic Children's Aid Society of Metropolitan Toronto v M(C)*, [1994] 2 SCR 165 and *CV v Children's Aid Society of Halifax*, 2005 NSCA 87, at para 8, direct me to consider whether the children continue to require state protection, taking into account their changing needs and those of their family, and any new circumstances that have arisen since the time of the first order, and after assessing the following factors:

- Whether circumstances have changed since the previous disposition order was made.

- Whether the plan for the children’s care is being carried out.
- Whether the least intrusive alternative in the children’s best interests is being applied.

[45] Eighth, when assessing whether the children currently remain in need of protection, I must “consider both the needs of the children and the capacity of their parents to meet them”: *Nova Scotia (Community Services) v VAH*, 2019 NSCA 72, para 42.

[46] Ninth, I must examine whether identified protection risks were mitigated by meaningful participation in services. The Minister is required to take “reasonable measures” to promote the integrity of the family: *Children’s Aid Society of Shelburne County v SLS*, 2001 NSCA 62, para 36. The goal of services is “to serve the children’s needs by equipping the parents to fulfil their role in order that the family remain intact”: *Nova Scotia (Minister of Community Services) v LLP*, 2003 NSCA 1, para 25. A parent’s refusal to participate in services speaks “volumes both as to his commitment to the process and his lack of insight into the difficulties confronting him”: *DAB v Family and Children’s Services of Kings County*, 2000 NSCA 38, para 51. In such circumstances, “it is difficult to imagine what further services could reasonably have been offered by the Agency”: *DAB v Family and Children’s Services of Kings County*, *supra*, para 51.

Options at Final Disposition

[47] Tenth, when the statutory time limit has expired, the court has only two available options at final disposition - a permanent care order or a dismissal: *NJH v Nova Scotia (Minister of Community Services)*, 2006 NSCA 20, at para 20. If the child remains in need of protection, I must not dismiss: *Nova Scotia (Community Services) v VAH*, *supra*, para 48.

Options When Timeframe Not Exhausted

[48] Finally, if the statutory time frame has not expired, I may grant a permanent care order only when satisfied that the circumstances justifying the earlier order are unlikely to change within a reasonably foreseeable time not exceeding the maximum period allowed under the *Act*: s. 46 (6).

[49] **Are the children in need of protection?**

Position of the Minister

[50] The Minister notes that on March 25, 2021, during the protection hearing, the parties agreed that the children were in need of protection pursuant to s. 22 (2)(g) of the *Act*. Since then, the father has not participated in services to address any of the protection concerns. To the contrary, the father refused to engage in services. Nothing has changed. The children are still in need of protection. Further, from the Minister's perspective, the evidence confirms the existence of three additional protection grounds - substantial risk of physical harm under s. 22 (2)(b); substantial risk of neglect under s. 22 (2)(k); and neglect under s. 22 (2)(j).

[51] In support of her position, the Minister identified three areas of significant concern. First, the father's parenting skills are in question because he has no insight into the children's needs. For example, he fails to vaccinate or wear a mask despite the younger son's compromised health condition. Second, the stability of the father's mental health is in question because of his erratic and disturbing behaviours. For example, the father demonstrated emotional dysregulation when police asked him to stop taking and posting photos of a neighbour. The father violently yelled about his right to photography as justification for his tirade. The father was threatening and hostile to protection workers. Third, the viability of the father's proposed parenting plan is in question given that his two main supporters live about three hours away, they aren't vaccinated, and one doesn't mask.

[52] Finally, the Minister notes that a permanent care order should issue even though child protection timelines were not exhausted because there are no services that the father could undertake to address the protection concerns within the legislative timeline; the father's circumstances are not likely to change; there is no available or suitable family placement; and a permanent care order is in the children's best interests.

Position of the Father

[53] The father disputes the Minister's claim of a substantial risk of physical abuse, emotional abuse, or neglect for reasons which include the following:

- Allegations based on hearsay are not proof, especially where the hearsay narratives are vehemently disputed and where the adult declarants neither testified, nor were cross-examined. I agree with the father. I place no weight on the hearsay comments from any adults who made child protection referrals to the Minister. I cannot properly assess their hearsay statements without cross-examination.

- Allegations based on political views are insufficient. A person's political beliefs about COVID vaccinations; the right to autonomy; the right to protest, even at the home of a health official; or to photograph, film, and make social media postings are not grounds upon which child protection findings can be established. I agree that political views are not a legislative ground for a protection finding. Canada is a pluralistic country where a variety of opinions is to be expected and welcomed. Views in and of themselves are not protection issues.
- He is a capable parent. He has a home. His home is clean. He has food stocked. He is financially self-sufficient. He has and will meet the medical, educational, and social needs of his children. His plan of care is strong and viable.
- The family had no child protection history until after the mother died. Before the mother died, he was a consistent and capable caregiver who often exclusively cared for the children while the mother worked. After the mother's unexpected death, the Minister misconstrued grief symptoms as child protection concerns. The older child did not exhibit significant delay before going into care. Any delays that subsequently presented arose because of his son's grief and the trauma of being taken into care.
- Neither neglect nor substantial risk of neglect is proven. There is no evidence that he failed to provide the children with adequate food, clothing, or shelter; or that he failed to adequately supervise them; or that he failed to provide them with affection or cognitive stimulation; or that he engaged in other failures indicative of neglect. Most of the facts upon which the Minister relies to support these allegations are derived from hearsay statements.
- Substantial risk of emotional abuse was not proven. There is no evidence that he will reject, isolate, deprive, inappropriately criticize or humiliate, or otherwise emotionally harm his children. The father's belligerence and dysregulation with child protection workers and, on one occasion, police, does not create a child protection risk: *Nova Scotia (Minister of Community Services) v SP*, 2020 NSSC 262, paras 68 to 71. Red flag issues are an insufficient basis for a protection determination: *Nova Scotia (Community Services) v KH*, 2021 NSSC 140, para 26. Further, the father is not generally belligerent. For example, negative behaviour was never

mentioned by school officials, IWK health professionals, the father's therapist, or any of the father's support network.

- Although the father acknowledges months of no contact with the children, his absence was not from a lack of desire. He states that there was miscommunication with his previous lawyer and that he was later refused because he could not wear a mask. On the occasions when he did exercise access, all went smoothly. There was no distress, hostility, or emotional dysregulation, or any other conduct that required intervention by access supervisors.
- He recognizes the value of counselling for himself and his older son. He has self-referred and is receiving counselling from a trauma specialist who testified that he is participating in a meaningful and engaged way. He has tentatively enrolled the older son in family therapy, which is contingent upon the children being returned to his care.
- Substantial risk of physical harm was not proven. The children did not and will not suffer physical harm because of him or as a result of any lack of supervision or protection.
- He will ensure that both children attend all appointments. He has arranged a diary system to keep track of medical and other appointments for himself and the children. His support network will assist with transportation or any other need that may arise.
- While the children were in the care of the maternal aunt and uncle, the father attended IWK appointments so that he could learn more about the younger son's medical condition and treatment. The IWK doctor noted that the father asked appropriate questions.
- He has a strong support system to help as needed. The Minister minimized the strength of his support network because of their political beliefs and social activism. His friends are reliable, capable, and committed to supporting the father and the children as required. The friends provided credible evidence.
- His reluctance to work with service providers selected and funded by the Minister is understandable from both a personal and legal perspective. Personally, the father said he was abused while he was a child-in-care and

that the Minister “left him to fend for himself in the darkest time of his life”: *Brief of Respondent*, April 5, 2022, page 12. The father was deeply concerned that the Minister would make unfair assumptions and would continue to treat him unfairly. The father was concerned about the Minister’s influence on service providers whose financial viability is based on agency referrals. Bias concerns are legitimate: Bala and Saunders, *Understanding the Family Context: Why the Law of Expert Evidence is Different in Family Law Cases*, (2002) 20 CFLQ 277; and Bala, Birnbaum, and Watt, *Addressing Controversies About Experts in Disputes over Children*, (2017) 30 CJFL 71.

[54] Finally, the father notes that child protection orders are not to be used as a tool for punishment: *Nova Scotia (Minister of Community Services) v AL*, 2019 NSSC 236, para 67. Rather, it is in the best interests of the children to be returned to his care given the absence of protection concerns, and the enumerated best interests factors, including those associated with the security and stability found in family and community relationships; his ability as a parent to meet the unique needs of each child; and the merits of his plan of care. The father notes that the children will suffer more harm by the granting of a permanent care order than by returning to his care.

My Decision

[55] I agree with the Minister. The Minister proved that the children continue to be in need of protection because they are at a substantial risk of emotional abuse, physical harm, and neglect. I will now provide my detailed findings under each of these headings.

#1. Substantial Risk of Emotional Abuse

[56] I find that the children remain at a substantial risk of emotional abuse in their father’s care. I further find that the father has failed to co-operate with the provision of services and treatment to remedy or alleviate the emotional abuse, and that this failure will continue.

[57] Emotional abuse is defined in s. 2(1)(1a) as “acts that seriously interfere with a child’s healthy development, emotional functioning and attachment to others” and includes rejection, isolation, deprivation of affection or cognitive stimulation, and inappropriate criticisms or humiliation. In *Nova Scotia (Community Services) v KM*, 2019 NSSC 312, this court held that a finding of

emotional abuse involves both objective and subjective elements. The parental conduct must be viewed objectively to prove conduct that seriously interferes with a child. The parental conduct must also be viewed subjectively based on its impact on the specific child: para 27.

[58] I note that on March 25, 2021, both parties correctly confirmed that the children were in need of protection under s. 22 (2)(g) of the *Act*. Therefore, the s. 22 (2) (g) finding is not an allegation. The father is incorrect when he now attempts to argue otherwise. The s. 22 (2)(g) protection admission of substantial risk of emotional abuse is a proven fact.

[59] Has this fact changed? It has not. This protection finding was neither resolved nor mitigated during the intervening time. I draw this conclusion for three reasons – lack of access, mental health concerns, and lack of services.

a. Lack of Access

[60] First, the father rejected and deprived the children of his affection, which in turn seriously interfered with their healthy development, emotional functioning, and attachment. For example, soon after the children were taken into care, the father stopped exercising access. He had no contact with his sons for over seven months, at a time when the children were grieving the loss of their mother, were transitioning to a new living arrangement with foster parents, and the older son was receiving trauma counselling. Despite their great and immediate needs, the father was unable to prioritize the children. The father chose to cut ties with his children. Objectively and subjectively, the father's conduct proves a substantial risk of emotional abuse.

[61] Further, I dismiss the father's argument that he "was stuck between a rock and a hard place" in his attempts to exercise access. The father was not stuck. The father had a choice. The father could have chosen to see his children, either in-person wearing a mask or face shield, or virtually. Instead of prioritizing the children and meeting their needs, however, the father chose not to connect with agency social workers, chose not to wear a mask despite the medical risks to the younger son, and chose not to exercise access. In so doing, the father placed the children at a substantial risk of emotional abuse.

b. Mental Health Concerns

[62] Second, the father's failure to meaningfully address his own mental health issues creates a substantial risk of emotional abuse. Until the father treats his own

mental health issues, he will not be able to recognize, focus on, and prioritize the needs of the children. For example, the father's rigid beliefs about autonomy and vaccinations have interfered in child-focused decision-making in the past, and will likely do so into the future.

[63] The father requires counselling to resolve the severe trauma he indicates that he has and is experiencing. The father refused to participate in services to address mental health issues, including agency suggested counselling, community-based mental health counselling, and a psychological assessment. The father said that he refused to participate because he does not trust the agency and he does not think he should have to participate. The father values his autonomy above all else.

[64] The fact that the father has a serious and continuing problem with emotional dysregulation is illustrated by the following examples:

- On December 21, 2020, the father escalated and used violent profanities and obscenities in the children's presence when social worker Rand was in his home. The father was either unable or unwilling to control his emotions.
- In May and June 2021, the father posted troubling social media posts, including pictures with blood, and one picture of people engulfed in flames which he captioned "Children's social workers that steal children for Forced Adoption this is what awaits you!!! Universal Soul Karma".
- On August 9, 2021, the father posted a video on his Facebook page called "Nobody News" which he recorded and proudly shared. It depicts the father's violent and vulgar-laced emotional tirade with the police who attended his apartment in response to a complaint from a neighbour. The neighbour objected to the father posting photos of her and her children on the father's Facebook page. The father's current and complete lack of insight was evident when he proudly smirked, chuckled, and encouraged the court to replay the video.
- The father repeatedly exhibited hostile and threatening behaviour toward agency social workers.

c. Failure to Complete Services

[65] Third, the father did not participate in services to improve his parenting skills to enable him to identify and meet the emotional and developmental needs of

his children. The father refused to work with the agency family support worker. The father did not successfully complete the Mulgrave Park Parenting Journey Program. Until recently, the father refused counselling and a psychological assessment. In fact, the father did not successfully complete any program. The father's current counselling has just begun. His counsellor, Ms. Annand, confirmed that the father's therapy is only at the relationship building stage.

d. Summary of s. 22 (2)(g) Finding

[66] I find that the children will be at a substantial risk of emotional abuse in their father's care because the father is unable to identify and prioritize the children's emotional needs, and he has not undertaken services to alleviate or mitigate the emotional abuse. The father's conduct seriously interferes with the children's healthy development, emotional functioning, and attachment to others, from both an objective and subjective perspective. The father opted not to participate in services until recently. His current counselling is in its early stages. The s. 22 (2)(g) protection finding has not been resolved or mitigated.

#2. Substantial Risk of Physical Harm

[67] In addition, I find that the children will be at a substantial risk of physical harm if I return them to their father's care. I reach this conclusion for three reasons – the failure to meet the children's medical needs, to recognize the need for medical assistance, or to seek help.

a. Failure to Meet Children's Medical Needs

[68] First, there is a substantial risk that the father will not be able to meet the children's medical needs. For example, Dr. Sheriko stated that the younger son can be negatively impacted by respiratory illness. Dr. Sheriko recommended that everyone who comes into contact with the child be vaccinated from the flu and COVID, and that they wear a facemask. Unfortunately, the father is against vaccinations. I infer that the father is not vaccinated because the father refused to answer any questions about his vaccination status. The father also refused to wear either a face mask or a face shield in order to exercise access or to attend court. At no time did the father provide proof of a medical exemption. The father is thus unwilling to meet the most basic health needs of the younger son.

[69] In addition, the father does not have training to administer the younger son's treatment. Training will be difficult because the father said that he would not enter the IWK to be trained if he is required to wear a facemask for long periodsⁱ, or if he

is required to be vaccinated. Further, the father's rather complicated plan to acquire proper training is not feasible.

[70] Similarly, the father has no viable plan to deal with health emergencies of either child because the father will not wear a mask as may be required to enter hospitals or other healthcare offices. When questioned about his plan, the father said that he would deal with the problem when it arises. The father lacks insight into the importance of planning and prioritizing the children's health needs.

[71] Further, the father's support network is not a viable plan because they too are not vaccinated and some cannot wear masks. Also, two of his friends live almost three hours away from the city. Time is often of the essence in medical emergencies, especially where there is a vulnerable child whose health is severely compromised.

b. Failure to Recognize Need for Assistance

[72] Second, there is a substantial risk that the father will not recognize the children's need for medical assistance, as illustrated by the following two examples:

- The father admitted that he did not read all the medical information about the younger son's serious health condition even though the information was given to him. The father also admitted that he will not enter offices or buildings where masking is mandatory. The father's failure to read medical information and his position on masking limits his educational opportunities to be better informed of the child's medical needs and when the child requires treatment.
- On the day of the mother's death, the father was unable to recognize the seriousness of her health condition, despite the severity of her symptoms, including her agonizing screams. The father did not call an ambulance, choosing instead to leave that decision in the hands of the critically ill mother.

c. Failure to Seek Assistance

[73] Third, there is a substantial risk that the father will not reach out for help if the children require assistance due to his lack of insight and his intense distrust of government and government agencies. The father described feeling belittled and misjudged by school staff, social workers, police, and service providers who could

have provided the father with the services that he desperately needs to properly and permanently address child protection concerns. Rather than accepting services, the father instead blamed and lashed out at those who wanted to help.

[74] Given the father's entrenched mistrust and anger, there is a substantial risk that he will not initiate contact with the police, child protection services, school, or government officials, even if such contact is required in the children's best interests.

d. Summary of s. 22 (2)(b) Finding

[75] In summary, the Minister proved that the children would be at a substantial risk of physical harm if they are returned to the care of the father because he will not be able to meet their health needs; he will not be able to recognize their health needs; and he will likely not seek help from agencies and authority figures.

#3. Substantial Risk of Neglect

[76] I find that the children will be placed at a substantial risk of neglect in their father's care, and that the father did not and will not co-operate in the provision of services to alleviate the harm. Neglect is defined in s. 3 (p) as the chronic and serious failure to provide adequate food, clothing or shelter; or adequate supervision; or affection and cognitive stimulation; or any other similar failure.

[77] The Minister proved substantial risk of neglect as demonstrated by the following examples:

- The father's inability to prioritize the needs of the children because of his rigid views on vaccinations and autonomy will likely lead to a failure to provide the children with adequate supervision and medical treatment.
- The father's failure to treat his own mental health issues will likely prolong the father's inability and failure to provide the children with adequate supervision or affection and cognitive stimulation.
- The father, likely together with the mother, failed to provide the older child with appropriate cognitive stimulation, causing him to experience serious development issues. Since coming into care and receiving a stable homelife and professional supports, the older child has made considerable progress. On a balance of probabilities, the father will not be able to provide either child with the cognitive stimulation or supports that they need.

[78] Further, the father did not participate in the services offered to him to address his parenting deficits and to alleviate or mitigate the outstanding protection concerns. The Minister offered the father the opportunity to participate in services. The father would not. The Minister exhausted all avenues to motivate the father's participation.

Summary of Current Protection Findings

[79] The Minister proved that the children were at a substantial risk of emotional abuse, physical harm, and neglect if in the care of the father. The protection concerns were not resolved or alleviated over the course of this proceeding. The father did not successfully complete services to alleviate or reduce the protection issues.

[80] Should a permanent care and custody order issue even though the statutory timeline did not expire?

Position of the Parties

[81] The Minister asked for a permanent care order even though the *Act's* outside deadline was not until June 18, 2022. The Minister said that the father would not be able to mitigate the protection risks within the two remaining months.

[82] In contrast, the father objected to the granting of a permanent care order because the legislative timelines had not expired. The father asked for a delay because he was undertaking counselling and hoped to have the children returned to his care.

Legislation and Law

[83] Sections 42 (4) and 46 (6) of the *Act* discuss the statutory requirements that must be met before I grant a permanent care order when legislative timelines have not been exhausted:

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

...

46 (6) Where the court reviews an order for temporary care and custody, the court may make a further order for temporary care and custody unless the court is satisfied that the circumstances justifying the earlier order for temporary care and custody are unlikely to change within a reasonably foreseeable time not exceeding the remainder of the applicable maximum time period pursuant to subsection (1) of Section 45, so that the child can be returned to the parent or guardian.

[84] In *Mi’Kmaw Family and Children Services v. KDo*, 2012 NSSC 379, this court noted that when exercising discretionary authority under ss. 42(4) and 46(6), the court must act judicially, in accordance with rules or reason and justice, and not arbitrarily: para 26 and quoting from *MacIsaac v. MacIsaac* (1996), 150 NSR (2d) 321 (CA).

[85] Further at para 29, after reviewing the dictionary meaning of “reasonably foreseeable”, and previous caselaw, this court summarized relevant factors used when determining if circumstances are unlikely to change within a reasonably foreseeable time:

- Whether other children have been placed in the permanent care and custody of the Agency, or in the permanent custody of other adults.
- Whether the children have a lengthy history of being in the temporary care of the Agency.
- Whether the parent lacked meaningful insight into the issues that gave rise to the protection finding.
- Whether the parent exercised access.
- Whether the parent lacked basic parenting and housekeeping skills.
- Whether an expert provided opinion evidence confirming an inability to parent.
- Whether the parent effected positive lifestyle changes.

Decision

[86] Even though this family did not intersect with child protection services prior to the mother’s unexpected death, I nevertheless find that the Minister has met the burden of proof for the following reasons:

- Since February 10, 2021, the children have been in the temporary care and custody of the Minister.
- The father did not exercise access for many months.
- The father lacks meaningful insight into the protection concerns and the issues that gave rise to the protection findings. He denies many of the concerns and deflects blame on protection social workers.
- The father lacks the parenting skills required to meet the needs of the children.
- The father refused agency services and did not affect the positive lifestyle changes necessary to address the protection concerns.
- The father only recently commenced trauma counselling. Given the many issues, and the father's lack of insight, it is not probable that the father can or would gain insight to affect the necessary changes by June 18, 2022.

Conclusion

[87] The Minister's application is granted. The children remain in need of protection because they are at a substantial risk of emotional abuse, physical harm, and neglect. The children have significant needs; the younger son has complex medical needs. The children require a dedicated and capable parent who can provide love, stability, guidance, and attention. Unfortunately, the father is unable to meet his children's needs. He lacks insight and parenting skills. He stopped exercising access. He refused to participate in services that the Minister offered. His recently initiated trauma counselling is insufficient to resolve or mitigate the serious protection risks.

[88] Regrettably, the father's plan of care is inadequate because of the outstanding protection risks. Further, although encouraged, neither friends nor family members put forth a plan of care. Given the circumstances, I appreciate and understand the inability of friends or family to offer a viable placement.

[89] Further, I am satisfied that the circumstances justifying the earlier temporary care order are unlikely to change within a reasonably foreseeable time not exceeding June 18, 2022.

[90] It is in the children's best interests to be placed in the permanent care and custody of the Minister.

Forgeron, J.

ⁱ The father did not suggest that he wear face masks or face shields for shorter time periods during any access visit or when access was being discussed.