

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *Nova Scotia (Minister of Community Services) v A.B.*, 2025 NSSC 195

**Date:** 20250611

**Docket:** HFD *SFHCFS*A, No. 133512

**Registry:** Halifax

**Between:**

Nova Scotia (Minister of Community Services)

*Applicant*

v.

A.B.

*Respondent*

**Judge:** The Honourable Justice Cindy G. Cormier

**Heard:** April 22 & 23, 2025, in Halifax, Nova Scotia

**Counsel:** Shawn O'Hara, for the Applicant  
Katelyn Viner, for the Respondent

**1 By the Court:**

[1] The Minister of Opportunities and Social Development wants an order for the permanent care and custody of N, who was almost 2 and a half years old when the matter was heard on April 22 and 23, 2025. N's biological mother, Ms. B, did not consent to the Minister's request for a permanent care order. Ms. B argued that N was not a child in need of protective services and that it was in N's best interests to be placed in their care and custody thereby terminating the *Children and Family Services' Act* matter. At the conclusion of the hearing, I indicated I would provide written reasons. These are my reasons.

[2] The application is under section 47 of the *Children and Family Services Act*, S.N.S. 1990, c. 5.

[3] Ms. B is N's biological mother. Ms. B initially identified two persons who may be N's biological father, LB, who has been described as "vehemently" denying being N's father, and TB, who also denied being the father. Ms. B did not initially identify her boyfriend, BS, as N's possible biological father. There will be more about BS later in my decision.

## **2 Previous Application involving B, A, and S**

[4] Ms. B has three older biological children, N's half siblings: B, born in 2016; A, born in 2018; and S, born in 2019. B, A, and S were the subjects of a separate proceeding under the *Children and Family Services' Act*. That matter began in 2019 and ended with B, A, and S being placed in their biological father's, LB's, care and custody in August 2022. Ms. B was granted ongoing supervised parenting time.

[5] The Minister had become involved with Ms. B's three eldest children after Ms. B identified that she was highly anxious, stressed, overwhelmed, and exhausted caring for her children. The records of the Minister reflect that in 2020 and 2021, Ms. B was contacting Emergency Health Services weekly – she was experiencing suicidal ideation and experiencing symptoms of agoraphobia. She reported being unable to leave her bedroom. In January 2022, concerns were raised about Ms. B allowing an individual, who had a history of assault toward a child and a history of reported “family violence” involving Ms. B, to assist Ms. B in caring for her children.

## **3 Application involving N**

[6] The application involving N began when he was born in **November 2022**. N was taken into the care of the Minister shortly after his birth in the hospital. N

remained in the Minister's care until **May 28, 2024**, when after two consecutive proceedings, N was returned to Ms. B's care pursuant to a supervision order.

Unfortunately, on or about **June 5, 2024**, N was taken back into the care of the Minister.

[7] Aside from a period of several days, May 28, 2024 through to approximately June 5, 2024, throughout the two court applications involving N (two and a half years), court orders have always placed N in the Minister's care and custody. Ms. B was represented by a lawyer throughout the two court applications involving N. In advance of the trial held in April 2025, an Order was granted pursuant to s. 96(1) of the *Children and Family Services Act* to include all evidence from the previous application involving B, A, and S as part of the more recent application involving N.

### **3.1 N's presentation / needs**

[8] N was born premature, and he was placed in the Neonatal Intensive Care Unit (NICU) until he was discharged approximately 22 days after his birth. He was readmitted to the NICU approximately eight days after his discharge due to symptoms of apnea, which was believed to have been caused by a virus, and I understand was resolved after he was given antibiotics. Previous seizure activity is no longer considered a concern.

[9] N has a family doctor, and he has also been seen by neurology. Evidence suggested N did not have to return for follow up. It did not appear that N required any follow up medication.

[10] N has been diagnosed with a microdeletion disorder. He has similar genetic traits as his older siblings and is at risk of developing autism and / or developmental delays. As of April 2025, N had presented with several developmental delays, including delayed speech and delayed social play.

[11] N underwent a speech language assessment in the fall of 2024 and N's foster mother has been involved in speech therapy services designed to help caregivers put into practice certain strategies to help N by incorporating those strategies into N's routine. N was referred to the Quick Start program for children who are suspected of showing signs of autism. N will automatically qualify for a publicly funded early intervention program due to his genetic condition. A referral was made for N after he was taken back into care in early June 2024.

[12] The Minister took the position that N was a child in need of protective services. The Minister argued that it was in N's best interests to reside in a home environment where his need for consistency, safety, and structure would be met.

[13] In April 2024, the Minister believed Ms. B may have developed sufficient skills and / or supports to be able to meet N's needs. Ms. B's plan of care, if implemented, may result in N no longer being a child in need of protective services. N was transitioned to Ms. B's home. Ms. B was directed to contact Early Intensive Behavioural Intervention (EIBI) and to self-refer to the Nova Scotia Early Development Intervention Services to ensure N was assessed for enhanced services while the Minister continued to assess Ms. B's progress and / or ability to care for N.

#### **4 The Agency's concerns**

[14] The Minister's concerns were initially:

- (a) Ms. B's lack of insight;
- (b) Ms. B's mental health; and
- (c) Ms. B's lack of parenting skills.

#### **5 Therapy – Qualified as Expert Witness**

[15] Ms. B participated in therapy with Marilee Burwash Brennan. Ms. B's goals in therapy included gaining skills and tools to better manage her mental health; and gaining an understanding of how her mental health could impact on N's wellbeing. One specific goal was for Ms. B to gain insight into the agency's concerns and to

not shift responsibility for her parenting decisions onto others. The Minister expected Ms. B to demonstrate that she could provide a safe and supportive environment for N.

[16] Ms. Burwash Brennan testified. She stated in part that Ms. B was “fairly” consistent in attending sessions. Ms. B was initially experiencing extreme stress and anxiety, and Ms. B had a difficult time leaving her house. Ms. B had reportedly experienced past trauma and had difficulty managing her anxiety on a consistent basis. Ms. Burwash Brennan stated that Ms. B initially presented with trouble remaining engaged and on topic, but later in the therapeutic process, Ms. B presented as active and engaged and able to stay on topic.

[17] Ms. Burwash Brennan indicated that it appeared initially that Ms. B was making decisions which were not appropriate and in June 2022, Ms. B could not care for herself or for her children. Ms. Burwash Brennan confirmed she had provided support to Ms. B in dealing with issues related to: securing housing; caring for her children; regulating emotions; and anxiety management. Ms. Burwash Brennan observed that Ms. B had improved her ability to care for herself and over time Ms. B recognized how her behaviour was impacting her children.

[18] Ms. Burwash Brennan expressed that anxiety is something Ms. B will have to manage forever and that having an ongoing professional counseling relationship for support would be helpful for Ms. B.

[19] Ms. Burwash Brennan stated that based on Ms. B's reports, Ms. B's ability to manage anxiety appeared to improve over time. Ms. Burwash Brennan acknowledged she had relied on information Ms. B relayed to her. Based on the information Ms. B provided, Ms. Burwash Brennan concluded Ms. B was better able to manage her panic attacks, to connect socially, to regulate her emotions, and to get out of the house. Ms. Burwash Brennan acknowledged she had only observed Ms. B parenting a child in her office for a brief time on one occasion, and she had observed Ms. B parenting a child via video on another occasion.

[20] Ms. Burwash Brennan indicated that Ms. B still has anxiety and will need to manage her anxiety for life. Ms. Burwash Brennan offered the opinion that Ms. B required an ongoing anxiety management plan. She observed that Ms. B did appear to have learned some strategies and tools, but an ongoing plan would be helpful and that situations of high stress may "trigger trauma" and Ms. B may respond inappropriately.



[21] Ms. Burwash Brennan agreed with the proposition that Ms. B appeared to have made significant strides until N. was returned to her care in May 2024. Ms. Burwash Brennan observed that based on Ms. B's self reports, from a mental health perspective, the period before N was placed with Ms. B was the best point in Ms. B's therapy. Ms. Burwash Brennan agreed that Ms. B did not have any children in her care when she was showing increased stability and an ability to implement various strategies discussed in therapy.

## **6 Family Support Services**

[22] Beginning in or around May 2021, Ms. B began working with a family support worker. The Minister directed that Ms. B work on parenting topics such as but not limited to: behaviour management, positive discipline, child development, community resources, stress management, structure / routine, communication, play, self-care, and personal hygiene. Ms. B also worked with a Parenting Journey worker available through a community resource.

[23] As of approximately April 2024, Ms. B had secured housing, she continued to be engaged in support services, and her medication was being managed through the Bloom program. The Minister's expectation was that Ms. B would need to continue to take her medication as prescribed and Ms. B would need to continue to access mental health support / parenting support services in the community.

## **7 Extension of Court Involvement in April 2024**

[24] In April 2024, the Minister advised Ms. B and the Court and that they were prepared to “roll” the proceeding over to give the mother, Ms. B, more time to prove her proposed plan of care could address the protection risk posed to N. The Agency’s Plan for the Child’s Care dated April 25, 2024 suggested in part:

...Ms. B is beginning to show insight into her lack of ability to access an appropriate and safe childcare provider for her children. Ms. B is continuing to show understanding of the (sic) how her mental health impacts the children. Ms. B is beginning to demonstrate skills learned through therapy and family support. Given that Ms. B is beginning to show progress in these areas, the Agency is prepared to work towards moving N to Ms. B’s care and we are currently in the middle of a transition.

As of May 21, 2024, the Minister anticipated placing N with Ms. B as of May 28, 2024, subject to the Minister’s supervision for an additional five months. A supervision order was granted placing N in Ms. B’s care as of May 28, 2024.

## **8 April 2024 Transition Plan for N**

[25] At trial, the Minister’s representative testified that the transition plan for N to Ms. B’s care was intended to proceed slowly and / or gradually. There was to be a period of introduction occurred before N was placed in Ms. B’s care and custody pursuant to a supervision order as of May 28, 2024. Ms. B’s parenting time increased or expanded from supervised parenting time to partially supervised parenting time in the community; to supervised and / or partially supervised

parenting time in Ms. B's home; to Ms. B's daytime parenting time being further extended; then overnight parenting was approved; and finally weekend parenting time was approved before N was placed in Ms. B's care and custody subject to the Minister's supervision.

[26] In April 2024, the Minister acknowledged Ms. B had done well when parenting one child for a short period of time, but the Minister remained concerned about whether Ms. B could maintain the necessary level of engagement with N "day in and day out," however, the Minister determined at that time that Ms. B had presented a plan which may adequately mitigate the Minister's child protection concerns. During the transition period of approximately one month, positive reports were received from service providers, and no concerns were raised about Ms. B's parenting of N.

[27] The plan Ms. B had presented to the Minister and which the Minister claims they relied upon when making the decision to place N with Ms. B in or around May 28, 2024 suggested Ms. B had a "new partner." Ms. B later acknowledged her partner was not new to her. She and her partner had been together for approximately three years, but Ms. B suggested her partner was new to N.

## **9 Placement on May 28, 2024**

[28] Following N's placement with Ms. B on May 28, 2024, the Minister learned Ms. B had arranged for N's former foster mother to care for N between June 2<sup>nd</sup> and 5<sup>th</sup>, 2024, and that Ms. B had also requested N's former foster mother care for N between June 9<sup>th</sup> and 16<sup>th</sup>, 2024. In addition, Ms. B had asked N's former foster mother not to alert the Minister about her requests for N's former foster mother to care for him for extended periods.

[29] On June 5, 2024, the Minister risk assessed the matter and found there were outstanding concerns regarding physical neglect and inadequate parenting skills, and they made the decision to take N back into care pursuant to section 22(2) b, g, and k of the *Children and Family Services Act* and that the Minister would pursue a plan to have N placed in the permanent care and custody of the Minister.

[30] At trial in April 2025, the Minister argued that at no point did Ms. B communicate to the Minister, who was court ordered to supervise N, that Ms. B intended to ask N's former foster mother to care for N for days at a time (June 2<sup>nd</sup> – 5<sup>th</sup> and / or June 9<sup>th</sup> – 16<sup>th</sup>, 2024). Ms. B's requests for assistance in caring for N came just days after N was placed in Ms. B's care and custody on a fulltime basis as of May 28, 2024. N was in the care of his former foster mother as of approximately June 2, 2024, and he was taken back into the care of the Minister on

or about June 5, 2024, and he has remained with his former foster mother since that date.

## **10 BS**

[31] The Minister suggested that Ms. B “hid” the possibility that BS was N’s biological father. Because of Ms. B’s deceit, BS’ circumstances were not formally considered when future case planning was being completed. In other words, because of Ms. B’s omission, the Minister did not have all the facts when assessing the level of risk present for N. Regardless of any finding of paternity or not, Ms. B failed to advise the Minister of her intent to allow BS to take on a parenting role with N if N was returned to her care.

[32] Ms. B claimed she had kept BS away from N because she knew he and / or they would be “judged.” Ms. B did not disclose any of BS’ involvement with N to the Minister until in or around June 2024. Ms. B then advised the Minister that BS was present with her at N’s birth and for all hers and / or N’s medical appointments in hospital. Ms. B also acknowledged that in or around April / May 2024 when N was transitioning from supervised care to unsupervised care, that a picture was taken of BS with N at Evans Fish Place, with BS pictured holding N in the air.

[33] After June 2024, BS failed to attend paternity testing arranged by the Minister. However, in March 2025, Ms. B and BS attended at Vital Statistics to redo N's birth certificate – with BS declaring he was N's biological father. I find BS was aware of and / or he had notice of the Minister's involvement with N as the subject of this proceeding, and he has failed to present a plan for the care of N.

[34] Ms. B has acknowledged she has been in a relationship with BS for approximately three years, suggesting she has known BS since March 2022. She claimed that although they did not live together, she spends time with BS around “five days per week.” She stated she had been waiting until BS made some changes in his life to allow him to take an active role with parenting N, but she stated she wanted BS to have a parental role with N.

[35] When asked about what she knew about BS' circumstances, she stated that she understood he was still “on methadone;” that he chose not to have “carries” and he attends to pick up his medication daily; that he has participated in an “alcohol addiction program” for an addiction whereby he was consuming more than twelve beer per day; and that there were major concerns about BS' health over the last three years. BS did not testify at trial.

[36] Ms. B explained that she understood BS had been trying to “wean down through a medical alcohol program approved by the state” which led to BS to being admitted to a detox program in early June 2024, a seven day program which Ms. B stated BS left after one day in the program (2024), and he had left a similar program after less than a day in 2023. Neither Ms. B nor BS shared any medical evidence regarding BS’s alleged enrollment in any treatment program(s) nor any evidence regarding BS’ progress or lack thereof in addressing his apparently life-threatening addiction.

[37] After June 2024, over a year and a half after the application was filed in relation to N, the Minister gradually came to realize that Ms. B’s “new boyfriend,” whom Ms. B had suggested she had become involved with “while she was pregnant with N,” was most likely N’s biological father. As noted above, the Minister did offer BS an opportunity to participate in paternity testing, but he did not follow through with the process.

[38] At trial, Ms. B suggested her intent was for BS to be a part of N’s life once BS addressed various issues to her satisfaction. On cross-examination, Ms. B was asked about the ring she was wearing on her ring finger. Ms. B acknowledged that she and BS had become engaged in or around January 2025 and that she intended / hoped BS would be a part of N’s life.

[39] Ms. B claimed she was prepared to exclude BS from N's life if necessary. I do not accept that Ms. B would exclude BS from N's life under any circumstances and / or I find that Ms. B is not capable of determining under what circumstances BS should be excluded from N's life. In April 2024, arguably one of the most critical times in her relationship with N, Ms. B did not show the level of commitment necessary to ensure N was no longer a child at risk of substantial harm. Despite Ms. B's plan for N, she persisted in a relationship with BS who has reportedly suffered from a life-threatening addiction for some years.

[40] Apparently, Ms. B saw no harm in arranging for N to be placed with another between June 2 and / or June 16, 2024, days at a time. I acknowledge N was never at risk with his former foster parent; however, the real question is whether N was and / or would be at risk in the continued care of Ms. B. I find Ms. B showed a significant lack of judgment, placing N at substantial risk of harm when Ms. B decided to arrange for N to go back and forth between caregivers at a critical period of his transition to her care.

[41] I find it is more likely than not that if N was returned to Ms. B's care, she would continue to make parenting decisions which would place N at substantial risk of harm. In addition to other potentially harmful parenting decisions, I find it is more likely than not that Ms. B would allow N to be exposed to BS's addiction



and / or symptoms of his addiction which would place N at substantial risk of harm.

## **11 BS' mother, JA**

[42] Of note is that referral information was received from BS' mother, JA. I understand the Minister's representative was unclear about JA's credibility and / or had concerns about her demeanor when she made the referral to them about BS. Ms. B argued that JA was not a credible referral source.

[43] JA did not testify at trial; however, I find that much of the most relevant information JA provided is uncontroverted and / or was confirmed by others, including by BS in a conversation he had with a representative of the Minister and / or by Ms. B at trial and / or when she had previously spoken with the Minister's representatives about BS.

[44] In particular, Ms. B took exception to BS' mother claiming Ms. B was taking care of BS' kittens while he was admitted to the hospital. Ms. B suggested that BS' roommates cared for BS' cat. I am not concerned about any misconception JA may have had about who ultimately cared for BS' kittens and / or his cat.

[45] Ms. B also noted that JA was wrong when she stated Ms. B was living in a rooming house with BS when he was admitted to an inpatient unit in or around June 2024. I am not concerned about whether JA was correct about when Ms. B and BS may have been residing in the same building.

[46] JA's statements were summarized in the Minister's business records as follows:

- a) Her son is 32 years-old and has been struggling with addiction for the past 17 years. She identified herself as an ER nurse of 35 years who also worked/works with MOSH (Mobile Outreach Street Health).
- b) She explained that her son previously used drugs intravenously and now abuses alcohol. She noted that he is on the MAP Program as well as prescribed methadone.
- c) She commented that her son is not well, that he will soon die, and that he entered detox that day but later self-discharged.
- d) She met Ms. B about two years ago and noted that the Agency was unaware that Ms. B is dating her son. When asked, she noted that they **do not live together but live in rooming houses**. (Ms. B stated and I accept that she is not / and she may not have been residing at a rooming house [with or without BS in the same house] at the time the referral was made by JA.)
- e) She advised that, to her knowledge, Ms. B does not have any addiction issues.
- f) She advised that her son has a 13-year-old child who resides in New Brunswick with his mother.
- g) She expressed concern with Ms. B's decision making in having BS in her life. She commented that Ms. B has agoraphobia and cannot ride the bus and cannot leave the home without BS' assistance. She noted that Ms. B also cannot stay home alone.
- h) She commented that she knows Ms. B has experienced trauma but commented that she has been lying to her therapist for two years.
- i) She explained that when BS entered detox today, Ms. B arranged for N to go with his previous foster parent for the week, as she cannot do anything by herself.

- j) She advised that Ms. B stated that she would be busy caring for BS' kittens while he is away in detox. (the issue is that Ms. B was not caring for N and / or required a placement for N for several days at a time)
- k) She explained that Ms. B relayed that if she is left alone without BS, she will have a mental breakdown.
- l) She commented that Ms. B "needs a whole lotta help."
- m) She stated that her son's life depends on getting him away from Ms. B and stressed that she is trying to save her son's life.
- n) She questioned why Ms. B would have let her son into her life when she was trying to regain custody of her children. She reiterated that BS is very sick and unwell. (my emphasis).

I accept many of JA's comments about BS' addiction / his health and that she was concerned about Ms. B's involvement with her son. Although JA did not testify and there were concerns about her presentation when she made the referral, much of her information is supported by evidence provided by other witnesses.

[47] According to agency records, on June 5, 2024, Ms. B suggested to the agency worker that her boyfriend BS intended to step up to be N's father." It was at that point that Ms. B stated that "BS was present when N was born, that he cut the umbilical cord, and that he was present when N was in the NICU."

[48] The Minister's business records indicate that in early June 2024, the Minister's representative reminded Ms. B that previously she had stated that her "partner was not ready to be a part of her plan or N's life." Ms. B initially represented that her partner would not be in the home nor have a relationship with N, indicating that their relationship was "new." The Minister's representative

advised Ms. B that the Agency had returned N to her care on May 28, 2024 based on the plan she had presented to them as a single parent, with the understanding that she was committed to caring for N on a full-time basis.

[49] On June 5, 2024, Ms. B acknowledged she had misrepresented her relationship with BS, however, at that time she indicated “she would like to move forward with including BS in her parenting plan and she would like N to meet him at a park.” When the assigned social worker inquired further about BS, Ms. B provided the following information / stated:

1. His full name and his date of birth;
2. BS was prescribed methadone since he was 17 years old, that he had previously injected drugs, but she believed he had been “clean” of that type of substance since he was 20 years old;
3. In October 2023, BS developed pancreatitis due to his alcohol misuse, and he was hospitalized, and subsequently he became involved in the Medical Alcohol Program (MAP) in an attempt to withdraw from the unsafe use of alcohol and avoid potential complications such as seizures and other medical issues. The MAP program recommended BS reduce his drinking to twelve beer per day as he worked towards sobriety. However, in December 2023, he had a relapse and began

drinking “frequently” again, and she claimed he had restarted the MAP program again in February 2024.

[50] An agency representative had the opportunity to speak with BS who confirmed that he continued to have trouble with substance abuse. The Minister’s representatives arranged for BS to provide a DNA sample to ascertain if BS was N’s father, however, BS failed to follow through with the testing and / or further efforts by the agency to arrange for testing.

## **12 Ms. B’s Claims**

[51] The Minister expressed concern that the childcare arrangements Ms. B made with N’s former foster mother June 2 to June 5, 2024 and / or June 9 to June 16, 2024, were made under false pretences. In addition, the Minister was concerned that Ms. B had specifically asked N’s former foster mother not to alert the Minister about Ms. B’s childcare requests and / or N’s whereabouts although the Minister was court ordered to supervise N’s placement in Ms. B’s care.

[52] The evidence suggests that initially, Ms. B told N’s former foster mother that she planned to travel by bus to attend her boyfriend’s family event (a graduation) in Moncton, New Brunswick. Ms. B had suggested that she did not

wish to take N with her to New Brunswick as N had not yet met BS and / or his family. Ms. B later claimed she had lied to N's former foster mother.

[53] Ms. B then suggested to N's former foster mother that Ms. B's plans to travel by bus to New Brunswick without N had changed, but she still planned to attend a local get-together at the Delta hotel in Halifax, Nova Scotia. Ms. B denied that she had told N's former foster parent that the event being held locally involved alcohol. Once again, Ms. B later claimed she had lied to N's former foster mother.

[54] Initially it appears Ms. B asked N's former foster mother to care for N between June 2 - 16, 2024, then Ms. B suggested perhaps June 2 - 5, 2024 and then again between June 9 - 16, 2024. Ms. B asked the foster mother not to advise the Minister's representatives about her request(s) for N's former foster mother to provide childcare.

[55] Again, Ms. B claimed she had lied about the trip to Moncton and / or about an event at the Delta hotel in Halifax, Nova Scotia. Ms. B then claimed she needed someone to care for N so she could be available to support her boyfriend, BS, while he was admitted to an in-patient treatment facility for his alcohol related disorder in or around early June 2024. BS did not testify, and he did not provide any documentary evidence related to any hospitalization and / or his health needs.

[56] At trial, Ms. B stated she had anticipated Mr. Steeves would not stay in the in-patient facility for the scheduled duration of his in-patient detox program (approximately 7 days) in June 2024, so she had decided to place N in someone else's care to be available to assist BS when he left his program. Ms. B explained that she believed BS would leave his program as BS had previously left a similar program he had entered in 2023.

[57] Ms. B claimed that she did not want to tell N's foster parent or to tell the Minister's representatives the truth about her desire to support BS in his recovery. Ms. B explained that she did not believe the foster mother and / or the Minister's representatives would be supportive / understanding of BS' needs and / or of her choice to support him. In explaining her choice, Ms. B argued that N was safe in the foster mother's home and that she and / or BS should not be penalized for choosing to support BS in his recovery.

[58] Ms. B stated that in June 2024, when BS left his in-patient alcohol treatment program against doctor's advice, Ms. B met with BS and gave him some liquor and provided him with support. Ms. B explained that she did not want BS to go through withdrawal without any support as he was at risk of serious health complications / even death. She claimed she needed to have someone else care for N for several days as she wanted to be free to help BS at a moment's notice. It is

of significant concern to me that Ms. B believed she needed to place N in someone else's care in anticipation of BS leaving his inpatient treatment program.

[59] Ms. B fabricated lies, and she asked N's previous foster mother not to report her requests for assistance with childcare to the Minister's representatives who were court ordered to supervise N's placement with Ms. B. After two and a half years and two proceedings, within days of N first being placed in Ms. B's care and pursuant to a supervision order, Ms. B felt it was necessary to place N with his former foster parent for several days at a time. I find Ms. B did so without significant regard to the overall short term and / or long-term impact on N's transition to her care and custody.

[60] It was Ms. B's responsibility to focus on creating a safe, stable, and predictable schedule of care for N in her home. She had an obligation to focus on building her bond with N after he was in another person's primary care for two and a half years. Ms. B should have understood, and I believe she did understand, that the Minister's expectation was that her focus would be on N.

[61] Ms. B's choice to place N in the care of his former foster parent for several days, and to not alert the Minister about BS' circumstances and / or her commitment to support BS, raises significant concerns about Ms. B's short and



long-term commitment to prioritizing N's best interests and / or his special needs above her own needs and / or above BS' needs. I believe it is more likely than not that Ms. B continues to experience significant stress in her life and that she is unable / unwilling to care for N on a full-time basis. The Minister has proven that N was at substantial risk of harm as Ms. B could not implement her plan and / or could not commit to being available / consistently caring for N.

[62] I find N is at substantial risk of harm. It is not likely in N's best long-term interests to be moving between various households for days at a time / being away from his proposed primary caregiver for days at a time when she was entrusted to take over his care while he was transitioning into her care.

[63] Ms. B has struggled, and I find she will likely continue to struggle, with her own mental health challenges and with her choices as they relate to her relationship with BS. I find the Minister has proven that Ms. B is not able to personally provide N with the stable, predictable, and consistent care he needs.

[64] The events which occurred between approximately June 2, 2024 through June 5, 2024, and Ms. B's decision to hide the significance of her relationship with BS from the Minister and from others, raises significant concerns about N's level of risk in Ms. B's care. Within a few short days after N was placed in Ms. B's full

time care she showed a lack of insight about the significance of N's transition to her home, she lied to persons who had been supports to her, and she could not care for N while also being available for BS.

[65] When a representative of the Minister initially asked Ms. B why she needed to place N with the foster mother for several days following his return to her care on May 28, 2024, Ms. B stated:

She hadn't been able to see her boyfriend since N started his overnight transitions and that she wanted to spend time with BS.

[66] Even if I accepted part of the information Ms. B relayed to me about BS' circumstances in early June 2024 (despite the lack of testimony or evidence from him), I am still unconvinced that Ms. B is able and / or willing to commit to following through with her plan to provide the consistent care N requires on a day to-day basis. Her inability or unwillingness to do so places N at substantial risk of harm.

[67] The Minister has proven to me on balance of probabilities that N would continue to be at substantial risk of harm if returned to Ms. B's care. Therefore, it is in N's best interests to be placed in the permanent care and custody of the Minister.

[68] The Minister's position was that although Ms. B had articulated "a well thought out plan in theory" she was "unable to enact that plan in practice." I agree.

[69] The Minister also expressed concern that Ms. B had failed to contact her doctor and / or N's doctor, as directed by the Minister, to inquire about a referral for early intervention services for N. As of June 3, 2024, Ms. B had failed to do so, and the social worker subsequently made a referral to early intervention services after N was taken back into the Minister's care on or about June 5, 2024.

[70] Although not determinative, Ms. B's failure to pursue the matter with some vigilance, especially given that the Minister was considering / evaluating her plan, is not very reassuring. As noted above, I find Ms. B understood she was jeopardizing N's placement in her care by prioritizing her own needs and / or her relationship with BS at the expense of N's short term and long-term needs and / or his long term safety and security in her care.

### **13 Review Application**

[71] In deciding to grant the Minister's application for the child's permanent care and custody, I considered the evidence and the requirements of the *Children and Family Services Act*, which involved considering:

- whether circumstances have changed since the last order was granted;
- whether the plan of care that I applied is being carried out;
- the least intrusive approach available; and
- whether the concerns which prompted the earlier order are unlikely to change within a reasonably foreseeable time that doesn't exceed the final disposition deadline.

[72] I find that circumstances have not changed sufficiently since the last disposition order was made. Ms. B did not carry out her plan. There is no less intrusive approach. The concerns about Ms. B's lack of insight, her mental health, and her parenting skills were never fully addressed and the disposition deadline has been exceeded twice.

[73] In *B.J.T. v. J.D.*, 2022 SCC 24, the Honourable Martin J stated in part in the preamble to that court's decision:

...

A parent's mere biological tie is simply one factor among many that may be relevant to a child's best interests.... Placing too great an emphasis on a biological tie may lead some decision makers to give effect to the biological parent's claim over the child's best interests and parental preferences should not usurp the focus on the child's interests. A child's bond is a consideration that should prevail over the "empty formula" of a biological tie. A biological connection is no guarantee against harm to a child and a child can be equally attached to persons who are not their biological parents and those persons can be equally capable of meeting the child's needs. In addition, the benefit of a biological tie itself may be intangible and difficult to articulate, which makes it difficult to prioritize it over other best interests factors that are more concrete. The importance of a biological tie may also diminish as children are increasingly raised in families where those ties do not define a child's family relationships... Comparing the closeness or degree of

biological connection is a tricky, reductionist and unreliable predictor of who may best care for a child. In the instant case, none of the enumerated factors in s. 2(2) of the *Child Protection Act* specifically relate to a parent's biological tie; therefore, a court is not directed to consider a child's biological relationship with the party seeking custody.

[74] I am directed pursuant to the *Children and Family Services Act* to make an order or determination in the best interests of the child, and I have considered 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, including N's relationships with his three half siblings;
- (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;

- (g) 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; and
- (n) any other relevant circumstances.

[75] There is no less intrusive option. Because the first final disposition deadline was over a year ago, and the second final disposition deadline was on or about April 25, 2025, time has run out for circumstances to improve and / or for Ms. B to have her plan in place and sustain it. BS has failed to participate in the proceeding

and / or to put forth any plan. No other family members / community members have presented a plan.

[76] In a review application, the options open to me under subsection 42(1) are:

- (a) dismissing the Minister's application and returning the child to Ms. B;
- (b) returning the child to Ms. B, under agency supervision for a specified period;
- (c) placing the child in a third party's care, under agency supervision for a specified period;
- (d) placing the child in the agency's temporary care and custody for a specified period;
- (e) placing the child in the agency's temporary care and custody for a specified period then returning them to a parent or another person for a specified period; or
- (f) placing the children in the agency's permanent care and custody.

[77] Further to settlement conference discussions in or around April 25, 2024, the parties agreed to "roll" the application over on or about April 25, 2024. After April 25, 2025 the only available options are returning the child to Ms. B or

placing N in the Minister's permanent care and custody. The statute's deadline for final disposition has passed twice, so neither Ms. B nor any other family members have more time to perfect a plan for the child's return to Ms. B or another.

#### **14 Ms. B's Arguments**

[78] In her submissions, Ms. B highlighted that I must be mindful of the legislated purposes of the *Children and Family Services Act*, which includes considering the integrity of the family, and that I must not remove a child from a parent's care unless there are no other alternatives available. I agree that it is the Minister's burden to prove that a child continues to be in need of protection and that there is a substantial risk or a real chance of danger apparent on the evidence.

[79] Ms. B argued that there was no evidence that she inflicted harm to N in the past or that she will likely do so in the future. Ms. B further argued that there were no valid concerns about her supervision of N and that he was physically and emotionally safe when Ms. B placed him with his former foster parent, and that he was not left unsupervised or at substantial risk of harm. As noted above, the question is not whether N was at risk of harm with his former foster parent – it is whether he is at risk of harm being in Ms. B's care. As noted above, I have found that N is at substantial risk of harm in Ms. B's care. Ms. B did participate in services but her failure to follow her own plan, her lies, and her failure to identify



BS as part of her plan suggests it is more likely than not that she was not able to mitigate any substantial risk of emotional and / or possibly physical abuse to N.

Ms. B showed a tremendous lack of insight, and I do not accept that the support persons she has identified are willing and / or able to provide care for N for days at a time in order to accommodate Ms. B's whims / or BS' needs.

## **15 The Minister's Arguments**

[80] The Minister set out the legal principles and the law in their brief. The Minister's Plan of Care provides a summary of the Minister's version of the relevant facts in this case and the Minister's position. The Minister suggested there were two plans for me to consider: a plan to return the child to his mother or the plan to place the child in the permanent care and custody of the Minister.

There are no other plans before the court.

[81] The Minister acknowledged it was their burden to prove the child was at substantial risk of harm. The Minister argued that there were significant issues related to Ms. B's credibility (including but not limited to several different versions of events which transpired in May / June 2024) and that Ms. B's plan was deficient and / or incomplete with Ms. B first raising the possibility of BS' involvement in a parental role with N in or around June 2024 and providing little to no updates since that time.

[82] The Minister highlighted that although Ms. B suggested BS did not visit her home, she stated she was with him at least five days per week. Despite the time Ms. B spends with BS, she stated she did not really know the people BS was residing with, or very much about BS' interests or his pursuits generally. She claimed she knew very little about BS' circumstances despite being in a relationship with BS for more than three years, and despite agreeing to marry him in or around January 2025.

[83] The Minister suggested there were many unanswered questions due to Ms. B intentionally misleading the Minister and the Court, and due to BS failing to participate in paternity testing and / or failing to become involved in the court proceeding. The evidence suggests BS presents a substantial and ongoing risk to Ms. B's mental health and / or the child's short-term and long-term stability with Ms. B. Ms. B's plan does not address this substantial risk to N. Despite this matter reaching its legislated limit twice, due to Ms. B and BS, the Minister has been unable to fully explore and / or investigate any mitigating circumstances due to Ms. B's lack of transparency and BS' lack of engagement.

[84] I agree with the Minister's characterization that Ms. B's plan as presented was general in nature but may have been acceptable in some circumstances. However, the evidence in this case supports a conclusion that Ms. B continues to

fabricate lies to suit herself when the need arises, and she does so without regard to the potential risk to N, and without regard to his best interests.

[85] It is difficult to know which story Ms. B told is true. Regardless of the reason, Ms. B was unavailable to care for N for extended periods, or for days at a time and at no time did she truly acknowledge the likely harm to N. The evidence shows that when Ms. B was finally entrusted with the care of N, within days she was unable to care for him – perhaps “trauma triggered.” She lied then or she lied after the fact. Either way, Ms. B’s choices placed N at substantial risk of harm.

[86] It is not in N’s best interest to be placed in an uncertain situation and / or circumstances. It is more likely than not that Ms. B’s mental health challenges have not been adequately addressed, and / or they have not improved sufficiently and there is the ongoing uncertainty related to BS’s lifestyle and future involvement with N.

[87] It is much more likely than not that Ms. B would not be able to parent N without significant community and / or other supports. There is insufficient evidence that Ms. B has the level of support available to her that she claimed she had.

[88] The evidence available proves that at the time this matter was heard, the services required by the mother and / or by the child if the child was placed in the mother's care were not yet in place. There was minimal evidence to no credible evidence of family supports, and the evidence suggested Ms' B's circumstances were unlikely to change.

### **Substantial Risk**

[89] I find there is a substantial risk to N suffering emotional abuse if he is returned to the care of Ms. B and that it is therefore in his best interests to be placed in Minister's permanent care and custody. At best, Ms. B lacks insight with respect to N's needs and / or she did not understand the level of commitment necessary and /or the consistent care she needed to provide to N personally as N's primary caregiver. It is more likely that Ms. B understood what was expected of her, but she refused and / or she could not and / or she would not comply.

[90] Ms. B tried to cover up her failure to personally provide for N's emotional needs by lying. I find it is more likely than not that Ms. B is not fully committed and / or able to provide N with the stable, consistent, and safe environment N requires based on his age, stage of development, and his special needs.

[91] Ms. B had an extra twelve months to implement her plan for N. Instead, her circumstances as of June 2024 and at trial raise more questions about substantial risk to N. The Minister has satisfied me that Ms. B's plan does not sufficiently mitigate substantial risk and is not in N's best interests.

[92] Where I think it is necessary to remove a child from a parent, I must consider the possibility of placing them with a relative, a neighbour, or a community member: clause 42(3)(a) of the *Children and Family Services Act*. As noted above, no relative, neighbour, or community member has been identified as a possible placement for N.

[93] I must consider a child's best interests in making a disposition order, and I have referenced subsection 3(2) of the *Act*. I am mindful of the importance of the continuity of N's care, N's physical, mental, and emotional needs, and the appropriate treatment to meet those needs, the level of N's mental and emotional development, and family relations.

[94] N is almost two and a half years old. Except between May 28, 2024 and June 5, 2024 (arguably June 3, 2024), and a short reintroduction period of approximately a month before that, N has not been in his mother's primary care nor has he lived with his mother.

[95] N's family relations with his siblings will be explored through the adoption process. Despite the duration of N's time in care and the irregularity of his contact with his siblings, the Minister clearly identified the issue of ongoing sibling contact as relevant to adoption planning and assured the court that the issue would be explored fully.

[96] I accept that N's needs are being capably met in foster care while adoption planning continues.

## **16 Conclusion**

[97] I have read the materials the Minister filed and those filed by Ms. B. I have conducted the analysis required by the legislation. I conclude that N continues to be at substantial risk of harm and it is appropriate, under the terms of *Children and Family Services Act*, and that it is in the child's best interests, that I grant the Minister's application for N's permanent care and custody.

Cindy G. Cormier, J.