

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Children's Aid Society of Cape Breton-Victoria v. H.A., 2005 NSSC 80

Date: 20050415

Docket: CFSA 28568

Registry: Sydney

Between:

The Children's Aid Society of Cape Breton-Victoria

Applicant

v.

H. A., G. A. and V. M.

Respondents

Restriction on Publication: Pursuant to s. 94(1) *Children and Family Services Act*.

Judge: The Honourable Justice Walter R.E. Goodfellow

Heard: April 15, 16, 2004, June 23, 2004,
December 6, 7, 8, 2004,
March 23, 24, 2005 in Sydney, Nova Scotia

Counsel: Darlene MacRury for the Children's Aid Society
Douglas P. MacKinlay for the Respondent, G. A., Sr.
Francis X. Moloney for the Respondent, H. A.

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT: A RESTRICTION ON PUBLICATION UNDER S. 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION.

SECTION 94(1) PROVIDES:

94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

By the Court:

BACKGROUND

[1] To fully appreciate the background in this matter, a starting point is the decision of the Honourable Justice Darryl W. Wilson, Supreme Court of Nova Scotia, Family Division, November 30, 2003. Justice Wilson rendered a decision after hearing nine days of evidence in an application for the order of permanent care of four children: W. D. born October [...], 1989, X. D. born February [...], 1991, children of H. A. and M. M. ; and Y. A. born February [...], 2001 and Z. A. A. born February [...], 2002, children of H. A. and G. A.. Justice Wilson's oral decision was given on August 12, 2003 and during the course of that extensive hearing, H. A. and G. A. had another child, K. A., born October [...], 2003, the subject of these proceedings.

[2] Justice Wilson set out in considerable detail the home environment in which the four children whom he was dealing with were exposed to. He noted the burden of proof in the proceeding before him was on the Children's Aid Society, that the placing of a child in the permanent care of the Agency is a very serious consequence. He concluded that the children were at substantial risk of physical

and emotional abuse and continued to be in the need of protective services. He concluded that it was in their best interests that they be placed in the permanent care of the Agency in accordance with the Agency's plan whereby the two oldest children, W. and X., would continue to have a relationship with their mother, H., as they desired but with the children in long-term foster care. Although H. A. and G. A. maintained the contrary, Justice Wilson found that they had a dependent relationship - one of confrontation centered around the misuse of prescription drugs, presence of street drugs, domestic violence, etc. He noted that the two oldest children had been the subject of child protection proceedings in the past and, indeed, G. A.'s other children had also been the subject of child protection proceedings in the past. Justice Wilson approved the Agency's plan for the two younger children, Y. and Z., to be placed for adoption.

[3] G. A. appealed the decision of Justice Wilson to the Nova Scotia Supreme Court and it was dismissed April 8, 2004.

[4] The Section 39 hearing in relation to the child, K. A., was heard December 8, 2003 before Justice J. Vernon MacDonald of the Supreme Court, Family Division. At the end of a transcript of the evidence presented to him, were the

submissions of counsel and Justice MacDonald's determination with respect to the child, K..

[5] He noted that neither G. A. nor H. A. sought the return of the child, K., to them but rather sought dismissal of the proceedings and if the proceedings were not to be dismissed, that the child, K., be placed in the care of one V. M..

[6] Justice Vernon MacDonald has experienced unfortunate health difficulties.

[7] The Protection Hearing with respect to the child, K. A., took place before me February 10, 11, 15, 16, 2004. I dealt with two motions: one motion by V. M. for standing which I granted and with the benefit of hindsight, it may well have been an error based on the issue having been addressed by Justice Vernon MacDonald. In any event, Ms. M. participated fully and was represented by counsel.

[8] The second motion was to incorporate in this application material, including the decision of Justice Darryl Wilson of November 3, 2003, as part of the record in this matter, and I ruled that such was admissible pursuant to s. 96 of the *Children*

and Family Services Act and formed part of this application leaving it to this application to determine what if any weight would be attached to any portion of the record, documents and material so incorporated.

[9] I rendered my decision April 29, 2004 and concluded without a shadow of doubt that the arrangement entered into between H. A. and V. M. was an artificial sham solely intended to try and avoid the high probability of the child, K., being taken into protective custody by the Children's Aid Society.

[10] H. A. had indicated and so advised G. A. that he was not the father of K. and I suggested that DNA should be processed and was advised by counsel, subsequently, the DNA resulted in confirmation that G. A. is the father of K..

[11] In my previous decision, I recited extensively from the decisions of Justice Darryl Wilson and of the Court of Appeal and I see no reason to repeat, once again, the significant features of those decisions nor do I see any need to repeat the findings I made in my decision of April 29, 2004 in this decision, bearing in mind that I continue to agree with Mr. MacKinlay with respect to the time for determining whether the child K. is in need of protection is now.

[12] **CHILDREN AND FAMILY SERVICES ACT**

Section 46(4) provides:

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

Section 46(5) provides:

- (5) On the hearing of an application for review, the court may, in the child's best interests,
- (a) vary or terminate the disposition order made pursuant to subsection (1) of Section 42, including any term or condition that is part of that order;
 - (b) order that the disposition order terminate on a specified future date; or
 - (c) make a further or another order pursuant to subsection (1) of Section 42, subject to the time limits specified in Section 43 for supervision orders and in Section 45 for orders for temporary care and custody.

Section 46(6) provides:

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. 1990, c. 5, s. 46.

Section 42(2) provides:

(2) The court shall not make an order removing the child from the care of a parent or guardian unless the court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,

- (a) have been attempted and have failed;
- (b) have been refused by the parent or guardian; or
- (c) would be inadequate to protect the child.

Section 42(3) provides:

(3) Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person

Section 42(4) provides:

(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. 1990, c. 5, s. 42.

Section 13(2) provides:

2) Services to promote the integrity of the family include, but are not limited to, services provided by the agency or provided by others with the assistance of the agency for the following purposes:

- (a) improving the family's financial situation;
- (b) improving the family's housing situation;
- (c) improving parenting skills;
- (d) improving child-care and child-rearing capabilities;
- (e) improving homemaking skills;
- (f) counselling and assessment;
- (g) drug or alcohol treatment and rehabilitation;
- (h) child care;
- (I) mediation of disputes;
- (j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;
- (k) such matters prescribed by the regulations. 1990, c. 5, s. 13.

Section 2(1) provides:

2 (1) The purpose of this Act is to protect children from harm, promote the integrity of the family and assure the best interests of children.

Section 3(2) provides:

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

- (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;
- (b) the child's relationships with relatives;
- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (d) the bonding that exists between the child and the child's parent or guardian;
- (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;
- (h) the religious faith, if any, in which the child is being raised;
- (I) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- (j) the child's views and wishes, if they can be reasonably ascertained;
- (k) the effect on the child of delay in the disposition of the case;
- (l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services;

(n) any other relevant circumstances.

FINDINGS

[13] The first and significant factual determination is what relationship, if any, exists between H. A. and G. A..

[14] Justice Wilson in his decision of August 12, 2003 was unable to conclude that H. and G. A. had ended their relationship. I recite some of the evidence in relation to that issue.

[15] Before me, H. A. confirms that she is not seeking care of K. and is now seeking that K. be placed in the custody and care of G. A.. In her evidence before me, she says she and G. A. separated around 2001 and that what contact they had together was primarily in relation to courses and visits initially to K.. She described [...] and said that G., Jr. resided in the basement with M. C. and she explains the telephone calls from X. D. as being to a cordless phone. She says that in July or August 2004, she was at that house to get the rest of her stuff and that X.

had called a couple of times. The whole thrust of her evidence is that she was there on a very limited number of occasions, unrelated to any personal association with G. A.. Such a position is totally unbelievable. H. A.'s somewhat volatile manner of giving evidence simply confirmed beyond any reasonable doubt that she is not capable of respecting any order of the court or authority with which she does not agree.

[16] In evidence before me is the report from the Cape Breton Regional Police which relates to certain events such as their attendances in relation to domestic violence in 2003.

[17] On January 21, 2004, at the request of H. A.'s sister, police responded to an incident at [...]. The report was at 9:42 p.m. and when the police responded to the residence, Ms. A. advised them that no assault took place. She acknowledged she had an argument with G. A. while on the phone and that her sister got the wrong impression, thinking she was assaulted.

[18] On March 30, 2004, shortly after midnight police responded to [...] for a possible domestic disturbance. This was called in by H. A.'s mother, B. D., who

dialled 911 and stated that there was a domestic dispute occurring between H. and her boyfriend, G. A., at [...]. The police attended, knocked on the door for many minutes and after conferring with B. D. who advised that H. was yelling and screaming, the police kicked in the rear door of the residence and found H. A. talking on the phone and she denied there was any domestic dispute. At that time, G. A. was not in attendance.

[19] There is another police report in February 2004, in relation to a motor vehicle accident. The female operator of one vehicle left after indicating there was no damage to her vehicle and upon tracking down the plate number, the police located the vehicle at [...]. The police record shows that they returned a phone call to H. A., wife of the vehicle owner, who advised that she was the driver and expressed the opinion that she was not at fault. The police attended at [...] and took a statement from H. A. at approximately 11:45 p.m. on February 23, 2004.

[20] H. A., in her evidence, indicated that throughout this period she was not residing at [...] and G. A., in his evidence, took the same position. When G. A. was confronted with the fact she was there one night after 9:00 p.m., he said that

would have been unusual because of transportation. However, the record indicates that on many occasions, well after 9:00 p.m., H. A. was at [...].

[21] There is a telephone record placed in evidence to the residence of C. I., who for a period in the summer of 2004 was the foster parent of X. D.. The telephone records show a substantial number of telephone calls by the child, X. D., seeking to contact her mother and the telephone number used is the telephone number of a telephone in [...]. The telephone record for this period does not disclose a single call to the residence claimed by H. A. to be her residence.

[22] C. I., a registered foster parent, gave evidence confirming that X. D. was placed in her home July and August 2004 and she confirmed her telephone number and that she had an answering machine which had a recording device and some of the tapes for this period have been tendered in evidence. For some reason, she was pressed in cross-examination and what I gather from that is that the child, X. D., was prepared and did make allegations of sexual misconduct as and when it suited the child's purpose. Apparently, she has even in the past alleged sexual misconduct by G. A. towards her. Sadly, this young lady has in all probability

been influenced by her mother, H. A., and to some extent by her stepfather, G. A., so that she has something less than a full appreciation of the concept of truth.

[23] H. A. was and appears to continue to be unable to control herself in relation to others and quite probably continues to have an addiction to drugs. Her conduct in relation to K., G. A. and her two other children is clearly detrimental to their welfare.

[24] In evidence before me is the transcript of telephone conversations between H. A. and X. A.: July 10, 2004, July 11, 2004 and August 8, 2004. H. A. encourages the child, X., disrespect for authority. X. reached H. A. at [...] and in all probability, those taped calls made to [...] were participated in by H. A. with G. A. in the residence.

[25] Patricia Bates MacDonald, a child protection worker with the Children's Aid Society, had conduct of this file from August 2002 until July 2003 when she went on maternity leave and then took over the file again on her return in August 2004. In 2002, she was dealing with the four previous children that were placed in protective custody. The child, K., has been in the care of the Agency since

November 14, 2003, substantially for the concerns expressed by Justice Wilson in his decision rendered August 12, 2003, filed November 3, 2003. He related the failure of the parents to follow up on recommendations with regard to parenting in relation to the four other children and then outlined the supervised access provisions since November 2003 for H. A. and G. A. in relation to the child, K.. G. A. had the opportunity of access by way of visits to K. and the record discloses his failure to attend on numerous occasions. G. A.'s evidence was of very limited failure to attend but the actual record speaks for itself - it is yet one further of many, many indications that G. A. does not have the capacity to carry out safe and proper responsibility for the child, K., and as I will indicate later, this is exacerbated by the continuing ongoing relationship between G. A. and H. A.. When G. A. cancelled visits, particularly in relation to a two week course through Addiction Services, he made no request to make up these visits nor is there any real satisfactory indication that at least some of these visits could not have been fit into the schedule. There is no indication of any additional family members, grandparents, extended family, etc., having made any request or showing any interest in the child, K. A..

[26] Patricia Bates MacDonald commented on the fact that H. A. and more particularly, G. A. had taken some courses in relation to parenting and addiction services. I agree with her opinion that brief addiction and parenting courses are fine but what counts is the behaviour, and that there has been no change in substance in the behaviour of H. A. while some very, very limited change in relation to G. A. may be observed. This starting point was so far off the finishing line that he has barely progressed out of the starting gate and his inability to sever relations with H. A. more than offset whatever minimal advances he has possibly achieved.

[27] The Agency has, quite rightly, been concerned about the repeated domestic violence between H. A. and G. A. and the abuse and neglect of the children, etc. Ms. MacDonald notes that H. A. also supported G. A.'s application in relation to the two youngest children, Y. and Z. A., and there is a strong parallel between the situation in relation to those two young children and that of the child, K..

[28] One of the workers, Maria MacLean, on June 5, 2004, observed H. A. and G. A. shopping together at the SuperValu Grocery Store. Another person (D. D.) reported seeing them shopping together in September. There was also the report

that G. A. was seen with the child, X. D., on October 20, 2004, when the police attended at [...] looking for the child, X.; both G. and H. A. were there.

[29] Ms. MacDonald reported that when H. A. called to confirm or cancel visits, the number she called from was generally the number they had to contact G. A.. At one time, the previous four children were put in the supervision of G. A. prior to the children going into permanent care and the two youngest being adopted. The supervision order provided that H. A. was not to have any contact with the children unless supervised or approved by the Agency. It is very clear from the record that H. A. with the acquiescence if not permission and desire of G. A., frequently breached the provisions of the supervision order given to G. A..

[30] H. A.'s son, G. A.'s stepson, X., who was fifteen at the time of the December 7 hearing, was a runaway from the Agency's care. Ms. MacDonald's evidence was that H. A. admitted that she knew where X. was from time to time. On August 27, 2004, Ms. MacDonald saw G. and H. A. in a motor vehicle as she was leaving the Provincial Building in Sydney. H. A. was getting out of the front seat on the Townsend Street side and she let out two males from the back seat and one was the child, X. D.. Ms. MacDonald passed right beside them and says that

X. looked at her and knew that she had seen him. Also, she is convinced that G. A. knew that she had seen X. D. and then she observed X. and the other male run across Townsend Street and take flight. This, of course, was during a period when the child, X. D., was on the run and missing. The presence of X. D. was disputed by G. A. and H. A.. However, without reservation, I accept the evidence of Ms. MacDonald and this is yet another example of the irresponsibility of both H. and G. A. and their total lack of capacity to abide by any authoritative direction or supervision.

[31] When confronted by the Agency, both G. and H. A. said Ms. MacDonald must have been mistaken, that it wasn't X. and it was another person who lived downstairs from them; but interestingly enough, no such person came forward to give evidence. In cross-examination, counsel for G. A. made suggestions that the person Ms. MacDonald saw was a named individual and that the other person in the vehicle was also a named individual; however, no witnesses were called fortifying my very strong belief and conclusion that Ms. MacDonald, in fact, saw X. D. on this occasion.

[32] Ms. MacDonald was familiar with X. and had been his careworker for a considerable period of time.

[33] I do not think it is necessary to recite any further evidence on this question except to say that I had the opportunity to observe H. A. in giving her evidence. She is a person lacking in any degree of control herself; yet, she has a capacity to intimidate and exercise a degree of control over G. A..

[34] I had the opportunity to observe G. A. in his giving of evidence. While he has made some efforts, it is clear that he is totally lacking in any capacity despite his wishes to avoid the influence and the high measure of control by H. A..

[35] G. A. indicates that a divorce petition has not been presented and suggests it is in relation to a property which he owns. However, if we were to believe H. A., they have been separated now since approximately 2001. The reality is entirely opposite in that there has been and continues to be a continuing relationship and a course of deception engineered and directed by H. A. which G. A. cannot bring himself to avoid a sufficient degree of participation by him. In the event that G. A. were to have anything to do with the child, K., such would automatically amount

to giving H. A. effective control, domination of the care and upbringing of the child, K., and such would be a total disaster for the child. In addition, as I will comment further, G. A. does not alone have the capacity to ensure a safe and stable environment for the child, K..

POSITION OF G. A.

[36] I have already concluded, without reservation, that G. A. has a continuing, ongoing volatile relationship with H. A. despite his denials and those of H. A.. Unfortunately, he seems incapable of removing himself from her influence. That situation will continue. H. A.'s presence in the life of K. would have disastrous results for this child. To return K. to an environment with a history of irresponsible parents, instability, a mother with a drug addiction problem, etc., would be returning the child to an unsafe environment. This is particularly so where H. A.'s continued association with G. A. will undoubtedly result in a measure of domestic violence to which G. A. historically responds by abandoning the ultimate responsibility for children to H. A..

[37] G. A. is a lobster fisherman with a license for fishing in Cape Breton. He acknowledges past drug use and the presence of drugs in his home and indicates at forty-four years of age he has been able to keep his distance from the previous situation. When the other children were taken into protective custody programs were indicated for both he and H. A.. The progress G. A. has made of recent date contrasts with the virtual absence of progress previously made and gives him some credit. However, I agree with the evidence of Patricia Bates MacDonald that it is the consequences and behaviour after programs that count. As I previously indicated, G. A., although he believes his attendance on access visits to K. has been pretty regular, it is less than satisfactory. He did take a 16 week Second Chance Program and he states that he has learned and has been taught to keep his distance from H. A.. The problem is, I conclude, he is simply totally unable to do so. I do not accept the limited contact of G. A. with K. has amounted to a bonding between the child and G. A.. I am fortified in this view by the reference in Ms. MacDonald's evidence to the observations of a fellow worker.

[38] G. A.'s criminal record is before the court and he commented also on police reports. He was at the time of last giving evidence doing community work with Loaves and Fishes and says he has been in the detox centre a couple of times and

he gave up alcohol one and a half years ago after he lost the kids. He acknowledges that he drank daily until he sought help. He quite correctly describes H. A. as dangerous and when threatened, will not take 'no' for an answer. His explanation of why H. was at [...] after 9:00 p.m. on occasion being due to the fact she was waiting for a drive, is simply not believable. The records show she was there on occasions after midnight and on other occasions after 10:00 p.m.

[39] Bruce Pratt, who works with Addiction Services, is a recovering alcoholic who has in the past 16 years dealt with plus or minus 80 clients per month. His specific title is Community Health Worker. While he does group work, his main function is counseling individuals on a one-to-one basis on recovery issues. He has known G. A. for approximately two years and there has been somewhat consistent counseling over the past year, meetings scheduled for every two weeks. He found G. A. very sincere in wishing to stay clean.

[40] Under cross-examination, we learn that G. A. saw Bruce Pratt on September 11, 2002, and then not again until January 2003. G. A.'s attendances for counseling from January, 2003 ceased and Mr. Pratt did not see him again until

December 17, 2003, (I believe Mr. A. missed this appointment), which was followed by regular treatment commencing January 13, 2004. The January 13, 2004 appointment was a re-booking of an appointment G. A. missed in December 2003. Mr. Pratt indicated his services were available in 2003 if G. A. had wished to make himself available.

[41] Mr. Pratt's note of the January 13, 2004 attendance (taken from transcript of cross-examination of Bruce Pratt by Darlene MacRury):

“Q. So what does your note tell you of his presentation on that date?

A. He felt at that time he was having problems with alcohol.

Q. Having problems with alcohol? And what was his problem with alcohol?

A. Uh he felt it was causing him problems in his every day life.

Q. Such that he was consuming on a daily basis?

A. He was consuming apparently 8 beers a day, every day.

...

Q. Does that, to you indicate you are dealing with an alcoholic?

A. That would indicate to me that I'm dealing with somebody who feels they have substance abuse problems.

...

Q. So your recommendation would have been the Detox or the day program?”

A. At that time, yes.

Q. And he expressed...did he tell you why he would not follow your recommendation?

A. He didn't feel, um, he was dealing with a lot of family matters at the time.

...

Q. Substance abuse was a problem in the care of his children?

A. In the care of his everyday life which in fact would mean with his children also.

Q. And you have identified alcohol as being the presenting problem? Did you review with Mr. A. at that time, in January of 2004, drugs, whether drugs presented a problem or did he give an indication?

A. At that time we completed an assessment. o.k., which would be a (...inaudible). I don't know if you are with familiar with the ...

Q. The drug assessment you mean?

A. Yes it's a substance abuse subtle screening inventory tool, it's one of the tools we use.

Q. And that would be obtained from information from Mr. G. A. would it?

A. Yes, yes, it's basically a 2 page tool that's used to assess his level of substance use and how that's affected him in his social structure.

...

Q. And the results of his tests at that time with respect to drugs?

A. Uh high probability of substance dependency.

Q. Would he have disclosed to you or would you have been aware that in March of 2003, the police search his home and found a quantity of drugs, hash oil and percadam (...sic)?

A. No, I wasn't aware of that.

Q. But your results would be consistent with that, that he had a high potential...?

A. No my results wouldn't state that the police would be there looking at his place for drugs but would state that it is a potential, yes.

Q. I misunderstood, I thought you said a high potential?

A. High potential for substance abuse, yes.

FRANCIS MALONEY: I think you used the word high probability.

BRUCE PRATT: Possibility.

FRANCES MALONEY: It says probability in my notes. Are we in agreement, high probability?"

DARLENE MacRURY: He's going to check his notes.

JUSTICE GOODFELLOW: Answer the question about the assessment, what was the result?

DARLENE MacRURY:

Q. Now high probability, is that of drug addiction or drug use?

A. Drug addiction.

Q. Drug addiction?

A. Um hum. That means an individual is physically as well as psychologically addicted to substances.

Q. They are addicted to substances meaning alcohol and/or drugs is it?

A. Well alcohol being a drug that's the reason why I refer to it as a substance because we refer to all drugs as substances."

[42] In summary, the evidence of Bruce Pratt is very illuminating and somewhat contradictory of G. A.'s claim to have been 'dry' for a lengthy period of time.

[43] The strongest supporting evidence for G. A. is that of Colleen Saunders, a clinical therapist. Bruce Pratt referred G. A. to Ms. Saunders. Her report cites a date of admission to a structured treatment program, September 27, 2004, with a discharge October 7, 2004. Ms. Saunders in her report states, "He is currently in a relationship that is not functioning as well as he would like it to ...". She goes on to describe him as a caring individual who is committed to being a good parent, "even when this means that he places his own needs second to those of his children." Her report also states, "He has difficulty being assertive, particularly when it relates to the children and often finds that he does not have a voice within the family unit." Ms. Saunders gave glowing evidence tantamount to suggesting G. A. was a candidate for father of the year. She acknowledged that she did not know very much about his background and pretty well admitted that it would not change her professional opinion. Her opinion, in my view, is hard to comprehend and not at all credible.

[44] The time-frame Ms. Saunders had to reach her conclusions was very brief. To conclude that he places his own needs after that of his children is simply not a conclusion with any foundation in fact.

[45] Dena Crane in her evidence outlined the programs G. A. had completed. She also spoke favourably of H. A.'s participation in programs. Programs such as "Siblings Without Rivalry" require no formal testing and you obtain your certificate merely by attending. None of the programs were specifically geared to infant children under two years of age and by way of example, "How To Talk So Kids Will Listen" is geared for children three to age eighteen.

AGENCY'S PLAN

[46] The Agency filed a detailed plan for K. and seeks a disposition that K. A. be placed in permanent care and custody of the Children's Aid Society of Cape Breton - Victoria, with no access to the child by H. A. or G. A. and that K. be placed for adoption. The Agency's plan is in considerable detail and concludes by noting that K. is currently in temporary foster care an environment in which she is adapting well to that is safe, secure and loving.

[47] The Agency's plan was filed and in addition Patricia Bates MacDonald reviewed and spoke at some length in her evidence as to why the agency reached the conclusion stated in the Agency's plan.

G. A.'S PLAN

[48] It is somewhat of an exaggeration to call what he is suggesting 'a plan'. Separate and apart from the inevitable intervention and control that would be exercised by H. A., 'the plan' advanced by G. A. is somewhat vague, lacking in any indication of real structure, lacking in any support, family or otherwise, at least to any degree that would give the court the slightest bit of comfort.

[49] Before the court in December, G. A. was indicating he would move to K. to Dartmouth and that suggestion was advanced in the final days of the hearing in March 2005. His plan would be to move to Dartmouth and have his daughter, H., move in and live with him. H. is a sixteen year old daughter of G. A. who is herself in the protective custody of the Children's Aid Society. G. A. says that he would obtain an apartment in the Dartmouth area and that he had sent some funds

to the child, H. , for that purpose. He also said his son, J., was going to return to Halifax, live with his girlfriend and some guy who runs a pizza shop.

[50] G. A. is a lobster fisherman and he said that he would arrange to return to Sydney during the lobster season and probably stay with his brother, N. A.. G. A. also indicated that he was going to contact the Children's Aid Society, which he referred to as the Agency, and seemed to convey that the Agency would supply support and services. Bearing in mind that when the Agency made an effort to assist G. A. in relation to the other children he did less than fully comply with their requirements and frequently participated in the breach of the supervisory direction with respect to H. A..

[51] Although it does not form any part of my conclusion, there is an added dimension with respect to K. in that the child has a health problem and there is some concern that the child might have cerebral palsy. The child's arms were apparently very rigid. According to Ms. Bates MacDonald, daily physiotherapy has addressed that problem and the child is gaining the mobility one would anticipate for her age. I have no reservation in saying that if the child needed that

type of regular medical attention and assistance that G. A. would simply not be up to dealing with the matter on any regular basis to the detriment of the child.

CONCLUSION

[52] The burden of proof in this proceeding is on the Agency. The placing of a child in the permanent care of the Agency is a total serious consequence.

Recognizing this heavy burden upon the Agency, I have no reservations in concluding that the Agency has met its burden of proof.

[53] I have considered the factors which have led K. to be in need of protective service. In the previous proceedings the failure of the parents to act in a responsible, safe manner. The addiction problems of H. A. continue and G. A. continues to have an inability to ensure any reasonable level of protection for the child, K., due to his inability to sever the relationship between himself and H. A.. I am satisfied that any less intrusive alternative than placing the child for adoption would be totally inadequate to protect the welfare and safety of this child. I have considered the plan of the Agency and the plan put forward by G. A.. Very clearly the plan of the Agency is in K.'s best interests and if K. were returned to G. A. she

would in all probability, approaching certainty, suffer emotional harm and quite possible physical harm when the inevitable domestic disputes arise.

[54] Daley, J.F.C. stated in *CAS of Halifax v. S.F. and W.L.* (1982), 110 N.S.R.

(2d) (159) that:

The **Children and Family Services Act** promotes the integrity of the family but only in circumstances which will protect the child. When the child cannot be protected as outlined in the **Children and Family Services Act** with the family, no matter how well meaning the family is, then, if its welfare requires it, the child is to be protected outside the family.

[55] It is not possible to protect K. or to further her best interests by returning her to either of the parents or relatives and it is in K.'s best interest that she be placed in permanent care of the Agency in accordance with the Agency's plan namely, that she be placed for adoption. It is also clear that it is in K.'s best interests that there be no relationship between H. A. or G. A. and the child, K., and that it is most appropriate that any access by either to K. should cease forthwith.

J.