

IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: Nova Scotia (Community Services) v. M.R.R., 2005 NSSC 121

Date: 20050517

Docket: SFH CFSA 034230

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

M. R.R. and R. R. B.

Respondents

Editorial Notice

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

Publishers of this case please take note that s. 94(1) of the *Children and Family Services Act*, S.N.S. 1990, Chapter 5 applies and may require editing of this judgment or its heading before publication.

Section 94(1) provides:

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

Judge: The Honourable Assoc. Chief Justice Robert F. Ferguson

Heard: April 20, 28 and May 3, 2005, in Halifax, Nova Scotia

Written Decision: June 14, 2005

Counsel: Katherine F. Carrigan, for the Applicant
Marian Mancini, for the Respondent, M. R. R.
R. R. B., self-represented
Linda Tippett-Leary, Guardian ad Litem

By the Court:

- [1] This is an application of the Minister of Community Services. The Respondents are M. R. and R. B.. They are the parents of B. A. B., born December [...], 1992 (currently approximately twelve years of age). In the course of this proceeding, B., by virtue of her age, became a party and has a *guardian ad litem* in Ms. Tippett-Leary.
- [2] The matter commenced with a protection application dated August 30, 2004, which alleged that B. was in need of protective services pursuant to the *Children and Family Services Act*, particularly s. 22(2)(b), (g), (I) and (ja), which state as follows:

22(2) A child is in need of protective services where

...

(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

...

(g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

...

(I) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent or guardian of the child, and the child's parent or guardian fails or refuses to obtain services or treatment to remedy or alleviate the violence;

...

- (ja) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (j);
- [3] The initial or what is often referred to as the “five-day” appearance occurred on September 3, 2004. Ms. R. appeared with counsel. Mr. B. appeared without counsel. J. S., the common-law partner of Ms. R., not a party to this proceeding, also appeared with counsel. On the date of this appearance, B. was residing with her father. Ms. R. indicated she would be contesting the application but agreed with B. remaining with her father until the hearing resumed. Mr. S. agreed, in the interim, to an order indicating he have no contact with B.. An order was granted with the preliminary finding as to B. being in need of protective services and that she would reside with her father, have supervised access with her mother and that Mr. S. would have no contact with her.
- [4] The application came forward again on September 13, 2004, presumably on a contested basis. However, the parties appeared together with Mr. S. and informed the court that there was an agreement as to how this application would proceed at that moment in time. An order was issued that basically continued the existing circumstances.
- [5] On October 20, 2004, the parties, including the *guardian ad litem* for B., appeared for a pre-trial prior to the protection hearing. Mr. B., on this occasion, had legal counsel. Both Respondents indicated they were opposing the application that was seeking a finding that B. was in need of protective services. The parties agreed to a settlement conference which was held on November 8, 2004, resulting in the issuance of a Memorandum of Understanding. Mr. S. participated in this conference.
- [6] At the scheduled protection hearing the parties, B., through her *guardian ad litem*, and Mr. S. appeared with the result that the protection order issued on November 30, 2004, with the agreement of the parties incorporated the Memorandum of Understanding.
- [7] A pre-trial prior to the disposition hearing was held on January 15, 2005. The Agency indicated they were seeking a continuation of the Supervision Order. Mr. B. indicated, at this stage, he agreed with the Agency. Ms. R. stated she was not in agreement with the Agency’s continued involvement in the life of she and B.. The disposition hearing was scheduled for two days: April 20 and 28, 2005. On this occasion, unlike previously, there was

not a subsequent agreement. Ms. R.'s objection remained outstanding and the hearing proceeded.

- [8] Witnesses were Dr. Albert Fraser, Cst. Duane Stanley, Silvia Frausin, H.C., M. C. R., R. B., J. S. and M. R..

HISTORY

- [9] Prior to being the subject of an intervention by the Agency, B. had resided primarily with her mother, M., and Ms. R.'s other daughter, M., who is seventeen years of age.
- [10] In June of 2004, the Agency was referred to the R. residence by a report of an altercation between Ms. R. and M.. The continuing conflict between mother and daughter resulted in M., at least by August of 2004, not residing with her mother. In that month, Ms. R. and her boyfriend, J., were identified by the local police as "persons of interest" in a robbery with violence investigation. The police executed a search warrant on the R. residence. Ms. R., J. S. and B. were present at the time. An altercation took place between Ms. R., Mr. S. and the police and charges were laid.
- [11] Mr. S. has a prior involvement with the Agency. In October of 2002, he was in an altercation which resulted in him being found guilty of spousal assault on his then girlfriend in the presence of her children.
- [12] The Agency became aware Ms. R. intended to enter into a relationship with Mr. S. on his eminent release from jail. Given his history of spousal abuse, Ms. R.'s previous complications with her older daughter which was reported to be at least, in part, attributable to her use of alcohol and her suspected criminal involvement, the Agency concluded B. was in need of protective services and the application was made.
- [13] Ms. R., from the beginning of this application, indicated her disagreement with the Agency's involvement on the basis of their conclusion that B. was in need of protection. However, at subsequent court appearances, she consented to orders that found B. in need of protective services. The initial orders provided B. reside primarily with her father, that Ms. R.'s access be supervised and that Mr. S. have no contact. Subsequent agreements reached through the settlement conference and later orders provided that B. remained in need of such services and ultimately returned to reside with Ms. R. subject to the Agency's supervision. The orders also required Ms. R. and

Mr. S. to be involved with services that deal with the issues of alcohol and spousal abuse.

- [14] In February of 2005, some five or six months after the initial court appearance, the Agency indicated they would be seeking a disposition order finding B. in the continued need of service while she remained living with her mother. The Agency further indicated they would be seeking a continuation of the drug testing which had previously been in place regarding Ms. R. plus an undertaking by she and Mr. S. to continue in some other form of counselling or, in the alternate, at least Mr. S. would continue in some form of counselling. Mr. B. indicated his agreement with the Agency's proposal.
- [15] Ms. R. indicated she had reluctantly consented to the requests of the Agency from their initial involvement; further, she and Mr. S. had complied with the previous court orders requiring their participation in drug testing and types of counselling and the reports emanating from such participation portrayed both she and Mr. S. in a positive light. The Agency submits Ms. R.'s drug testing results were less than satisfactory and that she has been possibly consuming alcohol contrary to an existing court order. They further believe there should be further involvement by she and Mr. S. with professionals regarding matrimonial counselling and/or spousal abuse.
- [16] All decisions emanating from the *Children and Family Services Act*, particularly ones made at a disposition stage, require a consideration of the whole of the evidence and the applicability of the provisions of the *Act*.
- [17] Without restricting the foregoing, I have considered, in addition to the preamble, the following sections of the *Act*:

Purpose

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.

Paramount consideration

(2) In all proceedings and matters pursuant to this Act, the paramount consideration is the best interests of the child. 1990, c. 5, s. 2.

Best interests of child

3 (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.

Disposition order

42 (1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

(a) dismiss the matter;

(b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;

(d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;

(e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;

(f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

- [18] The burden of proof in this proceeding is on the Applicant, i.e. the Agency. It is a civil burden of proof but also a proof that must be regarded for the seriousness of the consequences of the required decision [*Children's Aid Society of Halifax v. Lake*, (1981) 45 N.S.R. (2d), 361 (N.S.C.A.) And *J.L. v. Children's Aid Society of Halifax*, (1985) 44 R.F.L. (2d) 437 (N.S.C.A.)]. It is accepted it would be difficult to render a more serious decision than one in which a child may be separated, temporarily or permanently, from a parent.
- [19] Section 42(1), as earlier indicated, provides this court with six alternatives ranging from a dismissal of the application and the return of the child to the parent to a placement of the child in permanent care in control of the Agency with no provision for access to the parent.
- [20] It would be improper, at this time, to resort to the previous conclusions and findings in relation to the current order or previous orders in this proceeding or previous proceedings regarding these Respondents. The court is required to make a finding based on the evidence presented at this hearing.
- [21] I conclude the Agency's primary concern as to B.'s being in need of protection centres around her relationship with J. S. based on his criminal history, especially that portion dealing with domestic violence and he and Ms. R. being suspects in an armed robbery. I find there were also concerns as to Ms. R.'s past involvement with her older daughter and her reported use of alcohol.
- [22] In support of this conclusion, I quote from Ms. Arbeau's affidavit of November 4, 2004, which states:

6. On August 27, 2004, I conducted an assessment of risk in relation to B. B.. At that time, I determined that the risk to B. B. was great if J. A. S. were in the home where B. resides, based on Mr. S.'s violent criminal history, consisting of domestic violence in the presence of young children as well as his most recent suspected involvement in an armed robbery and assault of a police officer. I further noted that Mr. S. has been a part of B. B.'s life for approximately six months. I noted that there had been one reported incident of domestic violence involving the Respondent, M. R. R. (and her daughter, M. R.), as well as the most recent information obtained by police concerning J. A. S. and M. R. R. being suspects in an armed robbery.

7. In my assessment of the risks to B. B., conducted on August 27, 2004, as documented in my case recordings of that date contained at Exhibit "A", I noted that the Minister of Community Services received a referral regarding M. R. becoming aggressive with her children when under the influence of alcohol. M. R. had denied this and stated that she had stopped drinking after a serious car accident in June, 2004. At the time of my assessment, it was my view that M. R. did not appear to comprehend the significance of the past history of violence of her current partner, J. S.. The Agency had advised M. R. of the risks of allowing access between J. S. and M. R.'s daughter, B. B.. However, M. R. would not discuss the issue with the Agency or commit to any plan with the Agency. In my assessment of the circumstances, M. R. appeared to have a good knowledge of parenting, however she did not recognize the effects of exposing her children to violence.
8. In my risk assessment conducted on August 27, 2004, as outlined in my case recordings of that date at Exhibit "A", I noted that there appeared to be a healthy parent-child relationship between B. B. and her mother, M. R. R., however, there was a difficult relationship between M. R. and her oldest daughter, M. R.. I further noted that M. R. had been under stress due to the involvement of the Agency, a recent car accident and recent police involvement, and that M. R. was resistant to Agency involvement, such that there was little known about her support system. R. B. had advised me that many of M. R.'s family members reside in Toronto.
9. At the time of my assessment of risk on August 27, 2004, as outlined in my case recordings of that date at Exhibit "A", I believed J. A. S. to be residing with M. R. and that Mr. S. would therefore have unlimited access with B. B.. M. R. refused to discuss with me alternate arrangements for access to B. B., until further assessments could be performed.
10. As documented in my Affidavit of August 30, 2004, at paragraph 21, I participated in an Agency Risk Management Conference on August 26, 2004 (which I believe, in fact, took place on August 27, 2004). As a result of the Risk Management Conference, the Agency determined that there were sufficient protection concerns regarding B. B. to open a file to long-term services pursuant to Section 22(2)(b) and (g) of the *Children and Family Services Act* and that R. R. B. would be contacted to inquire about his ability to provide care for B. and to make him aware of the risk to his

daughter's safety. It was also decided that in the event an agreement could not be reached amongst the involved parties regarding B.'s care by R. R. B., the Department of Community Services would take B. B. into the care of the Agency to address her risk of harm.

- [23] Information was made available to the court pertaining to Ms. R. and Mr. S.. Mr. S.'s involvement with third parties dealing with identifiable concerns. First, there was Silvia Frausin, a clinical psychologist. Ms. Frausin spoke of Mr. S.'s involvement in a program "Moderate Intensity Family Violence." It was a program of two months duration. This report can only be described as a very positive reflection on Mr. S.'s participation. I quote from p. 10:

Mr. S. is a 29 year old provincial offender who was assessed as a moderate risk on intake. He was highly motivated from the initial interview and remained highly motivated throughout the program. He took full responsibility for his abusive behavior, demonstrated empathy for this victim and wanted to change his behavior so that he could have better relationships with women, be a good role model for his children, and to have better relationships with his other family members as well. He participated at a high level and made significance gains in skill acquisition.

Overall Mr. S. made significant gains in the treatment program meeting all of the goals expected of the participants and effectively addressed his principle risk factors; understanding the link between his thinking patterns and his abusiveness, thinking that supports abuse, emotional self management, and poor coping. It should be mentioned that Mr. S.'s supportive, gentle, and genuine confrontational style was an asset to the group process. His contribution to the progress of others (sic) members during difficult moments was noted and well appreciated by both facilitators.

It was a pleasure having Mr. S. in the group and I look forward to seeing him in the monthly maintenance meetings where he will be encouraged to continue to practice the skills he has already acquired.

- [24] Silvia Frausin did testify that Mr. S. was not able, through no fault of his own, to participate in the monthly maintenance meetings. When asked about programs available to Mr. S. on his release, she indicated she was unaware of anything that could provide for Mr. S.'s continuing involvement in a manner as related in her program.

[25] Ms. Tippett-Leary is B.'s *guardian ad litem*. In her report of April 19, 2005, she states, in part:

B. was her usual friendly, upbeat self. This is a child that is so busy with extra curricular activities that she amazes me. She was listing her participation in dance and in band and told me that she was in a choir that was singing six songs. There are a number of upcoming programs and she told me that within the next week she would be visiting approximately 10-13 schools (about two a day) performing. She was really looking forward to this.

B. appears to really enjoy school and seems to get along well there. She chats away happily about life in both homes (her mother's and her father's) and talks about how much she enjoys the activities she is involved in at school.

When I asked her about her relationship with her sister, M., she says that they get along and that they have quite frequent contact over the telephone or the internet, however, she found it sad that M. and her mom did not get along anymore, and sad that her parents did not get along either.

B. told me she found it very weird that M. would complain about her mother's drinking, when she (M.) does a fair bit of drinking herself.

This child has a great many people that love her and it is sad for her that none of these people seem to get along. Her mother and sister do not get along, her parents do not get along, and her family is currently involved in a stressful situation before the Court right now which B. knows involves J., her mother's new partner.

I can only repeat what I have said before, this is a child that presents extremely well, seems to be very well adjusted and although she, like any child, is undoubtedly affected by the presence of conflict in the family, she does not express any concerns whatsoever about the care of either of her parents or with their respective partners. My observations are shared by many others, including Jan Cressman, the counselor (sic) that had been put in place for B. and who has since concluded that this child does not require therapy any longer.

I will reiterate what I have said before, whether or not there are continued child protection concerns in M. R.'s home is for the Court to determine, not this

Guardian. I just simply want to make the Court aware, once again, that B. is very happy and content in her present circumstances and wants to remain there.

- [26] Deborah Garland is a registered psychologist that was seeing Ms. R.. She states, in part, in a report dated February 16, 2005:

Ms. R. has attended therapy sessions on January 13, January 27, and February 10, 2005. Within the service plan/contract possible concerns regarding domestic violence were identified as a result of allegations made by Ms. R.'s eldest daughter, who is not living in the home; that Mr. S. has a history of domestic violence appeared to support the allegation. However, Mr. S. when convicted and incarcerated successfully completed programming aimed at addressing these concerns. Based on my involvement with Ms. R., there have not been any indications of domestic violence; the only factor that has some limited potential for risk might be the strength of Ms. R.'s personality. It was identified that a risk factor for Mr. S. was becoming dependent in a relationship; Ms. R. has a dominant personality thus, this could become a concern if both parties permit it. However, this does not appear to be a problem currently.

The issue for therapy with Ms. R. would be anger; currently, she has a tendency to react, and often in anger, rather than respond after some reflection. However, in Ms. R.'s defense she has had a multitude of difficulties within the past few months; from a serious motor vehicle accident, accusations and investigation of involvement in a serious crime, to the involvement of child protection services. Ms. R. continues to have health concerns which prevent her from a return to work. She has complied with the conditions place (sic) upon her by Child Protection Services, but has reached the limit of her compliance.

Overall, M. R. has demonstrated reasonable control and a not unreasonable response to demanding circumstances. She is a bright, articulate woman who is perhaps strong-willed but capable of asserting herself if need be. Further therapy sessions focused (sic) on anger, its cause and affect, might be beneficial; however, should this not occur it is likely that Ms. R. would be able to cope adequately. The long-term result of arousal such as anger usually manifests in medical conditions such as gastro-intestinal problems, headaches, and other physical ailments. Should Ms. R. wish to continue in therapy, a schedule of twice per month would be recommended.

- [27] And further on March 29, 2005, there was a further report which stated:

Since my last report (February 16, 2005) Ms. R. has attended two more sessions: February 24, 2005 and March 24, 2005. As stated in the previous report, Ms. R.'s need for therapy was negligible. She appears able to cope in stressful situations of which she has a number; many are related to physiological conditions as a result of her accident.

Ms. R. is very cooperative and attends scheduled appointments promptly; however, it has become apparent that there is not a real need for future therapy sessions. Therefore, on May 24, 2005 termination was discussed and agreed to by Ms. R..

[28] Martin Whitzman is a registered marriage and family therapist who saw Ms. R. and Mr. S. at the request of the Agency. On November 4, 2004, he reported stating, in part:

A preliminary assessment of this relationship was conducted during the first two meetings. I was not provided with the Agency file but did have some communication with the Social Worker presently involved with this case. It is my understanding that the Agency has never received any information that would indicate that family violence has occurred during the past eight months. Their concern relates to J.'s past violent history and whether the dynamics in this case are such that it can be expected that violence will occur in the future. In addition, M. has been involved in a previous relationship where she was the victim of abuse.

J. and M. both report that their relationship is extremely satisfying on all levels that were explored in session. In other words, this is not a couple who would have requested relationship counseling (sic) as they are both indicating that there is no need for changes. They have had disagreements and arguments, without any escalation. They had been under a tremendous amount of stress and M. has found there are times when she is "bitchy."

J. readily admitted that he was in jail for a previous assault against a girlfriend. While in jail he attended courses and received further counseling (sic) through the programs in the halfway house. He described numerous examples of how the programs have helped him both individually as well as in relationships. He presents as a very warm and motivated individual who will do whatever is necessary to have B. return to the family home. He noted that he loves children and has developed a close and caring relationship with B.. The problems related to M. had been ongoing and escalating prior to J.'s arrival in the family. The present

problems have certainly side tracked the initial focus on M. but M. is still hopeful that a positive relationship can still evolve.

To conclude, the assessment and counseling (sic) with M. and J. has just begun. Their relationship is eight months old and has experienced a great deal of stress over the past few months. The fact that they have remained together throughout this stress and appear able to support each other, is clearly viewed as a strength. However, it is not yet clear how the relationship dynamics will unfold and whether this will increase the likelihood of family violence. J. and M. present as a highly motivated couple who are willing to continue with any services which will help in the return of B. to the family. I am prepared to provide some objective measures by performing a relationship test which will measure the present dynamics and provide information about "goodness of fit." In addition, it is important that some time be spent exploring how alcohol may be involved in this relationship.

- [29] On December 12, 2004, Martin Whitzman again reported with regard to his involvement in this matter stating, in part:

To conclude, discussions at our last meeting on December 3rd revealed no apparent relationship issues or concerns. They both reported that their recent crisis had actually helped bring them closer and improve their level of communication. They described other positive changes in their relationship, such as J.'s desire to remain away from certain friends who have had a past negative influence. They continue to deny any problems or concerns which require therapy at this time.

I have suggested that a follow-up session in January could assess how their relationship has adjusted to the return of B.. I do not see any present relationship concerns which would suggest that B. should not return home with J. and M.. A review of their file does highlight J.'s previous problems which have not resurfaced to date.

DROP-BY VISIT REPORTS

- [30] The court was provided with reports made by Agency employees who, from time-to-time, on an unscheduled basis attended the residence of Ms. R.. The overall assessment of this evidence portrayed Ms. R., and even to a lesser extent Mr. S., in a positive fashion.

MS. R.'S USE OR ABUSE OF ALCOHOL

- [31] One of the primary reasons for the Agency's request to continue their involvement in the lives of Ms. R. and B. is the concern as to Ms. R.'s use of alcohol and their belief she did not comply with procedures put in place to address this concern, specifically her adherence to drug testing procedures that were court ordered. Ms. R. has mentioned, from the outset, her ability to provide and protect her daughter, B., is not hampered by her use of alcohol; that she agreed to such testing because it was her only way to effect the return of B. to her care.
- [32] The information provided as to Ms. R.'s use of alcohol in the past to the extent it was interfering with her parental abilities comes primarily from three sources:
- (1) Her estranged teenaged daughter after a dispute with her mother over the choice of friends. The evidence on this point provided Ms. R. with an adequate reason for concern if not an adequate reason for the manner in which she handled the confrontation;
 - (2) Ms. L., who later recanted these allegations and who, since then, would appear not to be a helpful person in the ongoing lives of B. and/or Ms. R.;
 - (3) Ms. R.'s estranged partner who acknowledged that he has, in the past, over used alcohol and was involved in personal instances of domestic violence.
- [33] Ms. R. did make herself available to an Addiction Prevention Treatment & Services of Capital Health. A report dated December 10, 2004, stated:

RE: R., M. RACHEL - D.O.B. 24 NOVEMBER 1970

As requested, Ms. M. R. was seen at Counselling & Community Support Services, Dartmouth office, Addiction Prevention & Treatment Services, for assessment of her alcohol/drug/gambling use. Ms. R. attended the Assessment Screening Group on November 24, 2004.

The following self-reporting instruments were completed as part of this screening process:

- (1) **Substance Abuse Subtle Screening Inventory (SASSI)** - low probability of having a substance dependence disorder
- (2) **Michigan Alcoholism Screening Test (MAST)** - Lifetime - **no problem**
Past 12 Months - **no problem**
- (3) **Drug Abuse Screening Test (DAST)** - Lifetime - **no problem** Past 12 Months - **no problem**
- (4) **South Oaks Gambling Screen (SOGS)** - **no problem**

Attached is a brief explanation of each of the above instruments.

Given the results of these instruments and an individual interview on December 10, 2004, it was determined that this individual is not in need of further contact with Addiction Prevention & Treatment Services at this time.

- [34] It is acknowledged that the “instruments” used were self reporting but they are, nevertheless, the “instruments” used by this group who perform this service.
- [35] The results of Ms. R.’s drug tests were less than satisfactory. Although no positive tests were recorded, the number of very “dilute” and effectively unreliable samples were well out of proportion to the norm. The suspicion is that Ms. R. deliberately consumed large quantities of water before or just prior to providing samples to prevent an inaccurate reading and probably mask the fact that she was consuming alcohol.

MR. S. AND HIS SPOUSAL ABUSE

- [36] Mr. S. has a history of spousal abuse; one incident so serious he was incarcerated. His evidence at this hearing as to his use or non use of a weapon in that event, i.e. a knife, during the incident was less than convincing. That being said, he has participated in what was described as a very meaningful treatment and was described a model participant. The fact that he was not able to participate in some follow-up or maintenance due to his change of status does not diminish from the positive affect of his report.

- [37] Ms. Frausin was unable to identify any program that was open to Mr. S. on his release that, in effect, could provide the assistance he would have received if he had continued in the maintenance portion of the specific program.
- [38] Mr. S. has been involved in other forms of counselling since his release with, as previously mentioned, positive results.
- [39] Ms. R. may have been less than forthright in complying with her agreed to drug testing process. Ms. R. may have consumed alcohol during a time she undertook not to do so. Mr. S. may personally benefit from further counselling regarding spousal abuse and marital affairs. Mr. S. and Ms. R. could probably benefit from continuing family counselling. The question is, however: Is B. R., as of the date of the hearing, a child in need of protective services pertaining to the specific sections of the *Act* enunciated by the Agency?
- [40] There is no evidence upon which I could conclude B. has suffered physical or emotional harm. The evidence provided established B. is progressing as a child in a very positive manner despite the family turmoil.
- [41] The term “substantial risk” in s. 39(6) is described as a real chance of danger that is apparent on the evidence. The Minister suggests that the court should conclude there is such chance of danger to B. as outlined by the *Act*.
- [42] It is further suggested by the Agency:
- (1) that there is a current order finding B. in need of protective services;
 - (2) that in that order, according with the findings, Ms. R. and Mr. S. were required to comply with certain court directions; and
 - (3) that these court directions have not been satisfactorily complied with with the resulting conclusion that the order should remain in effect.
- [43] With respect, I cannot accept this submission as the test applicable in this situation, especially in this particular instance. First, there has been a considerable, if not substantial, compliance with the requests the Agency has made of Ms. R. and Mr. S.. Second, the evidence does not support a conclusion B. R. is in need of protective services and, in accordance with s. 42(1)(a) of the *Act*, I dismiss the application.

[44] On a related point, my conclusion today that this child is not in need of protective services should not be taken as sustenance to what I consider the allegation of Ms. R. and Mr. S. that they have been victimized by the involvement of the Agency or the police. For what it was worth for the considerations that I had to make, I found the evidence of the police officer to be very compelling. For what it was worth, I find that the Agency's involvement, given the information available to them, was appropriate and in the interests of B.. Ms. R. and Mr. S. both owe, to a certain degree, a debt of gratitude to the Agency for their involvement.

J.