

SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Nova Scotia (Community Services) v. T.B.* , 2014 NSSC 252

Date: 2014-07-09

Docket: SFHCFSA-087799

Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

T.B. and J.B.

Respondents

Restriction on Publication:

Publishers of this case please take note that 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:

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

Publishers of this case further take note that in accordance with s. 94(2) no person shall publish information relating to the custody, health and welfare of the children.

Judge: The Honourable Justice Elizabeth Jollimore

Heard: July 2 and 3, 2014, in Halifax, Nova Scotia

Counsel: Megan M. Roberts for the Minister of Community Services
Shelley Hounsell-Gray for T.B.
Joseph M. J. Cooper, Q.C. for J.B.

By the Court:

[1] Formally, this is a review hearing relating to the placement of two siblings, a nine year old girl (S) and a seven year old boy (L). It is made pursuant to section 46 of the *Children and Family Services Act*, S.N.S. 1990, c. 5.

[2] Since September 9, 2013, the children have been in the temporary care and custody of the Minister of Community Services. The Minister has determined that the children may be returned to either their mother or their father under agency supervision. So, the contest is not between the Minister and the children's parents, but between the children's parents, who separated after this proceeding was started and have not agreed on the children's residence or their access. I am asked to determine these arrangements. For so long as the Minister is involved the children are, effectively, in the Minister's custody. There is no application under the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160 for a parenting order or for child maintenance.

[3] As I did at the conclusion of the hearing, I acknowledge each parent's efforts and accomplishments since this proceeding began ten months ago. The concerns which warranted the Minister's involvement were so significant that the children were removed from their parents and the family home and placed into foster care. Working with agency staff and on their own, Ms. B and Mr. B have successfully resolved the Minister's concerns about the children's well-being. This is a considerable achievement.

[4] After the couple's separation, Mr. B remained in the family's rented accommodations in the Cowie Hill area of Halifax. Ms. B initially went to stay with a friend. She then moved to Bryony House and, ultimately, to an apartment provided by Alice Housing. Ms. B lives in the Woodlawn neighbourhood in Dartmouth.

Background

[5] The agency received over a dozen referrals about the B family between 2006 and 2013. Various concerns about the children's care or their environment were not substantiated. Following a referral in August 2013 there was an investigation. The parents were interviewed, as were their daughter, the children's babysitter, the children's principal, their son's educational program assistant, their son's pediatrician and Ms. B's foster sister. As a result of the investigation this child protection application was started, premised on the children being in need of

protective services, based on clauses 22(2)(a), (b), (e), (f), (g), (h) and (ja) of the Act.

[6] The major concerns noted when the application began were the children's lack of supervision, the children's physical and emotional abuse, the unsafe home environment and the children's neglect and maltreatment (L missed medical appointments and his missed medication, and S – then aged eight – was tending to his needs).

[7] S was placed with a foster family, and L was ultimately placed at Akoma Family Centre. S's placement meant that she attended a new school. The Minister felt it was in L's best interests that he remain at the school he had attended during the previous year, when he was in grade primary.

[8] At the five day hearing neither parent was represented. Mr. B had already met with a counsellor, and Ms. B had an appointment scheduled.

[9] By the time the interim hearing was completed, in early October, both parents had counsel. Mr. B agreed to work with a family skills worker, to attend counselling and anger management counselling. He agreed with the request for a parental capacity assessment which would involve psychological testing.

[10] Ms. B had not yet instructed her lawyer with regard to taking part in a parental capacity assessment, wanting more information to assess its need. She proposed that the children could stay with her mother or her aunt in Antigonish. (Ms. B's older son from a previous relationship lives with her mother.) Both the Minister and Mr. B had concerns about placing the children in Antigonish given L's autism.

[11] In November, there was a pre-trial conference prior to the protection hearing. At this, the parties consented to production of police records. Ms. B continued to propose placing the children with her family in Antigonish and to oppose participating in a parental capacity assessment. She requested additional one-on-one access with S, saying that L's needs had distracted her from S. Mr. B began to press for participating in a parental capacity assessment on his own, since Ms. B was unwilling to take part.

[12] At the protection hearing in December, Mr. B queried whether a limit would be placed on how long the Minister would devote to assessing a possible placement in Antigonish, so that his mother be considered as a possible placement for the

children. Further production orders were agreed upon, and the parties consented to a finding that the children were in need of protective services pursuant to clause 22(2)(g) of the *Act*. Ms. B consented to participate in the parental capacity assessment and psychological testing.

[13] The protection order was reviewed in January. At that point, the Minister had completed its review and was not supporting placement of the children with their maternal grandmother. Information hadn't been received which would allow the Minister to assess a placement proposed by Mr. B. At this point, Ms. B was opposing the children's removal from their current placements: S, with a foster family and L, at Akoma.

[14] In early March, the parents consented to a disposition order. At the time, Ms. B wanted the children transitioned to the school they would attend in the fall. Mr. B disagreed "vigorously", saying a move before the end of the school year was inconsistent with minimizing changes in L's circumstances.

[15] There was a settlement conference in April, and the review hearing came before me on July 2 and 3, 2014.

[16] In cross-examination, Anne Simmons, the parents' long term social worker, agreed with Ms. B's counsel that the agency became involved with the family because of domestic violence, L's medical neglect and the children's inadequate supervision. I note this because the grounds on which the Minister based its application did not include clause 22(2)(i) which refers to the children suffering "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". The home was not a peaceful one. According to Ms. B, her husband "yelled at me a lot. I yelled back. Sometimes the children would try to stop us from fighting." Mr. B admitted that he and his wife called each other names and he acknowledged that he had "a temper".

[17] The reference to domestic violence seems to have its origin in Ms. B's allegation that Mr. B was physically abusive to her.

[18] Shortly after the children were taken into care, both parents accessed counselling through Mr. B's employee assistance plan. On September 18, Ms. B met with a counsellor. The counsellor's notes (which were quoted in Anne

Simmons' February 2014 affidavit), report that Ms. B disclosed verbal abuse by her husband and that Ms. B stated "there is no physical abuse".

[19] On September 30, 2013, Mr. B told Ms. Simmons and Ms. B that he'd be offering a plan to parent the children that didn't include Ms. B. He said he'd realized this was the only way the children could return home. Ms. B had no prior notice of this.

[20] Ms. B first mentioned physical abuse on November 6, 2013, when she told Ms. Simmons that Mr. B had grabbed her shirt to push her on November 5 and tried to trip her on the stairs on November 6. She said he'd been verbally and physically abusive to her and that it had started several years earlier and had escalated.

[21] According to Ms. Simmons' February 2014 affidavit, on November 6, 2014 Ms. B said that she had phoned the police and would be meeting a police officer that day to take her statement. When Ms. Simmons spoke with Ms. B on November 7, Ms. B said she had spoken to the police, but she was unable to provide the police incident number.

[22] On November 8, 2013, Ms. Simmons phoned Victim Services to obtain the incident number for Ms. B's police report. No number was available. Ms. Simmons was told that Ms. B hadn't filed a report. Ms. Simmons then phoned Ms. B who "insisted she had filed a police report" and said she couldn't remember the name of the officer to whom she'd spoken. Ms. B said she'd provide the officer's name when she got home. She didn't do this.

[23] Halifax Regional Police records were obtained pursuant to a production order. They disclose that Ms. B didn't contact the police on November 6 or 7 when she said she had: she contacted the police on November 8. Mr. B has been charged with assault and with uttering threats. His trial is scheduled for September 2014. Currently, there is an order that Mr. B have no contact with Ms. B.

[24] In February 2014, Ms. B told Ms. Halpern, her family skills worker, that Mr. B physically abused her and that she left him in 2010, returning when he promised things would be different. The agency was involved with the family in 2010, and both parents independently told the agency's social worker that Ms. B and the children had to leave Mr. B's mother's home. They went to Bryony House. Ms. B told the social worker that there'd been an argument among the adults (Ms. B, Mr. B and Mr. B's mother). She didn't disclose any physical abuse.

When Mr. B was asked why his wife was at a transition house, he explained that the entire family couldn't remain at his mother's, but he needed to stay there so he could afford to pay bills while Ms. B and the children stayed elsewhere.

[25] Ms. B did not challenge the chronology of events in the fall of 2013. It appears she was not truthful in her remarks to Anne Simmons, and she may not have been truthful in her remarks to the counsellor.

[26] I am explicit in my view about the allegation of physical abuse because I want the context for my decision about the children's residence and access to be understood. I am not persuaded, on a balance of probabilities, that there was physical violence between the parents. Another judge faced with different evidence may conclude otherwise. I accept that there was domestic abuse: they called each other degrading names and yelled at each other. They did this in the presence of the children and they, as well, yelled at the children.

[27] Mr. B has participated in counselling to manage his anger. Ms. B has taken part in Alice Housing's "Personal Empowerment Program" and will, this fall, take part in its "Beyond Trauma" program. These programs may assist her in moderating her reactions to the children.

Statutory context for this hearing

[28] In a review proceeding pursuant to section 46 of the *Children and Family Services Act* the options available to me are identified in subsection 46(5) and include, under clause 46(5)(c), making "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". The options in section 42 are varied. The parties agree that the appropriate order is one granted under clause 42(1)(b), returning the children to a parent under the agency's supervision. Each parent consents to the children's placement with him or her under supervision.

[29] An order under section 42 is to be made in the child's best interests. This engages subsection 3(2) of the *Act*, which outlines what I am to consider when determining children's "best interests". Of the factors listed in subsection 3(2), some are not relevant to this application: clauses 3(2)(g) through (l) are not relevant. I've been given no information about the children's cultural, racial and linguistic heritage, their religious faith, and their views (if any) about their parents' plans. There is no prospect of an adoption to be considered and no concern of

delay. The nature of this hearing indicates no concern that S or L may suffer harm from being returned to either parent.

[30] The best interest factors listed in clauses 3(2)(a), (b), (c), (d), (e) and (f) are relevant to the B children. These factors focus on the individual child (the child's level of physical, mental and emotional development; the child's physical, mental and emotional needs; and the appropriate care or treatment to meet the child's needs) and the child within its family (the child's bonds with parents; the child's development of positive relationships with parents; the child's security as a family member; and the child's relationships with relatives).

The children

[31] The focus of this proceeding are nine year old S and seven year old L.

[32] I was not provided with individual reports from the case aides who have monitored the children's visits with their parents. Some of their observations are summarized in Ms. Simmons' affidavits and two aides, Gillian Dixon and Andre Crowe, were among the collateral sources interviewed by psychologist Debra Garland as she prepared the parents' parental capacity assessment. From these I have an appreciation of the need for each parent to be fully engaged when caring for the children: L's circumstances demand his parents' attention and it's important that S not feel ignored as a result of her brother's needs. The children are active and their demands are constant.

Nine year old S

[33] S has just completed grade three at a new school. She needs support at school. The most recent report card provided for her, which is from her first term in grade two (the fall of 2012), reflected marks in the A and B range, with a C in mathematics. She was not receiving any individual programming at school.

[34] S will take part in a psycho-educational assessment on July 29, 2014. This will be available for her return to school in September. According to her parents' parental capacity assessment, S needs extra support at school (particularly in reading, where she reads below her grade level) and at home.

[35] Physically, S's only identified health concern is a heart murmur.

[36] Historically, S spent one-on-one time with her father, going on fishing and hunting trips to a family cottage. As well, they'd watch movies together. Since the children were taken into care, Ms. B has arranged additional access with S, beyond that which she has with both children, to strengthen their relationship.

[37] S is reported to have done well in adjusting to her foster home. S has been seeing a counsellor, and his report says she's made significant progress and makes efforts to use what she's learned in her therapy.

[38] Michael Belgrave, S's counsellor, says that S is progressing in increasing her sense of trust in those who care for her and reducing her own need to control her circumstances. He says that "[a] key component in her ongoing sense of self and sense of safety will be the progress she perceives her caregivers to have made when she returns to their homes." Ms. Belgrave says S needs an environment of "security and safety and her caregivers will need to demonstrate" that things are different: they are in charge, able to care for her and keep her safe.

Seven year old L

[39] L was diagnosed with autism spectrum disorder at age three, in September 2010, and he was diagnosed with attention deficit hyperactivity disorder in April 2013. There have been referrals to other specialists, such as speech/language therapy and occupational therapy, for him.

[40] L's school history is outlined in his psycho-educational report. According to it, he is on a "full Individual Program Plan (IPP) for social skills, life skills and all areas of academics". He spends most of his school day in the school's learning centre, spending between thirty and sixty minutes in the grade one classroom with his classmates.

[41] According to his psycho-educational report, L has a "very structured visual schedule" that has "many opportunities" for movement and daily "Handwriting Without Tears programming". At his school, his learning centre teacher said that L is monitored by the school-based speech-language pathologist and occupational therapist.

[42] L has attended the same school for grades primary and one. As his father says, L "knows the staff at [. . .] school and the staff knows him". Mr. B says that L's fulltime educational program assistant "has worked fairly close with him since he started attending" the school.

[43] L has been described as having neurofibromatosis, but it's not clear that this has been conclusively diagnosed through genetic testing.

[44] L's psycho-educational assessment provided five pages of "supports and strategies". Some are general and relevant at school and at home, while others are more specific relating to literacy, math and social skills. Keys to his success include structure and routine, patience and moderation. It is best for L if things are predictable. Change should come slowly and with notice to him.

Ms. B and her plan

[45] Ms. B is thirty-seven. She's worked outside the home and was the children's primary care-giver. She stayed at home with the children following L's birth until he began school in 2012.

[46] L was selected to take part in the IWK Health Centre's Early Intensive Behavioural Intervention (EIBI) programme, beginning in October 2010. This involved home and Health Centre visits to work with L and the Bs. The programme is truly an intensive one, involving multiple visits each week. My review of the records indicated over one hundred visits in the period from October 19, 2010 to June 2012. A rough count shows that Ms. B attended all of these visits while Mr. B, who was employed outside the home, attended approximately twenty-five. There were numerous cancellations and concerns that L was either sleeping or just waking up when the EIBI team arrived. Ms. B was once cautioned that the cancellation rate needed to be less than twenty percent of sessions each month and L needed to be up and ready to take part, when the team arrived. According to Ms. Simmons' February affidavit, Ms. B cancelled or missed approximately forty EIBI visits during a seven month period.

[47] Ms. B has lived in an apartment provided by Alice Housing for the past five months. Alice Housing is second stage transitional housing. Its sole mandate, according to Ms. B's counsellor, Kathleen Jennex, is to work with women and children fleeing domestic violence. Women and children who have left a transition house (where they may only stay for a few months) move to second stage housing, like Alice Housing. At Alice Housing, they can stay for as long as two years. They may ask to stay longer and these requests are addressed on a case-by-case basis. Because she has already been at Alice Housing for five months, Ms. B is able to remain for a further nineteen months.

[48] As her counsellors tell her, Ms. B's "full time job" is getting her life back on track: she isn't employed outside her home. Ms. B attends programming offered through Alice Housing: group counselling and weekly individual counselling. She's also been directed to community resources. She receives social assistance and, since her rent is income-based, she can afford a three bedroom home for herself and the children in a safe neighbourhood. Once she has completed her counselling, Ms. B wants to return to work. Because she isn't currently employed outside the home, she would be available to the children at any time when she wasn't involved in her own programming. Childcare is available for L and S at Alice Housing while Ms. B attends her sessions.

[49] If placed with Ms. B, the children would attend Brookhouse School. Despite her efforts, Ms. B was not able to obtain specific information about the resources that might be available at Brookhouse for L. There is a resource centre and resource teacher at the school. The school runs from grade primary to grade six, with two classes in each grade. There was no evidence about the number of students served by the resource centre and the resource teacher and no evidence that there are any autistic children at the school.

[50] If the children are placed with Ms. B, Alice Housing will provide programming for them. There is a child and youth counsellor who provides weekly individual counselling for children who are over age four and modified art and play therapy. Counselling and therapy are focused on issues related to domestic violence, as this is Alice Housing's sole mandate. The child and youth counsellor, Lori Morgan, works with the children's school and has a good relationship with the school. There are recreational activities for children as well. Ms. Morgan did not provide an affidavit or testify. Ms. B's counsellor, Kathleen Jennex testified that Ms. Morgan would spend an hour with Ms. B and the children each week, from the time the children were placed with Ms. B until they left Alice Housing.

[51] Ms. Jennex is a women's counsellor. As such, she has not had experience working with children with autism. This isn't part of her work. She said that Ms. Morgan, the child and youth counsellor, has had such experience, but that it has not been within the last four years.

Mr. B and his plan

[52] Mr. B is thirty-one. He's worked for the same employer for the last three years. He works shifts (split shifts on weekdays, and uninterrupted shifts on the

weekends). He has Thursday and Friday off each week under his current schedule, which will be revised in August. He has little seniority, so his schedule is subject to the demands of many other employees who are senior to him.

[53] Within a few weeks of the children's being taken into care, Mr. B identified that he and Ms. B would not offer a joint plan that would enable the children's return. He has maintained the family's home in Cowie Hill to preserve the prospect that the children might return to their neighbourhood school. Mr. B lives alone. He has attended counselling and completed a parenting program. His efforts to enrol in a second program (recommended by L's psycho-educational assessment) have not been successful to date.

[54] Throughout this proceeding, Mr. B has been more willing than his wife to co-operate with the agency: agreeing to production orders and participation in the parental capacity assessment more quickly than she did. His approach has recognized, from the outset, that L's school is a significant factor in L's success and has acknowledged that minimizing change is also important for L. While he proposed moving the children from the agency's placements, it was on the basis that they'd be returning to their familiar school.

[55] The cornerstone of Mr. B's plan is the nearby school, which is the only school L has ever attended. The advantages of this school are identified in paragraphs 40 to 42.

[56] Because Mr. B is employed (and his work day can begin as early as 4:45 a.m.), his plan depends on his mother, who would need to provide early morning (likely overnight) childcare, and care during the day when the children are not at school.

[57] The children's paternal grandmother will soon turn 55. She is a licensed driver and has a car. She says the distance between her home and her son's is "only two minutes". She works privately as a housekeeper for five hours each week. In the past, she worked for two years at a daycare/pre-school. She has attended over thirty workshops with Child Development Services and has a level two Early Childhood Education Certificate. She says she has a good relationship with S and L, and has spent time with them and babysat them in the past. Since the children were taken into care, she has not had contact with them because she understood "from speaking with the children's agency that it would be confusing and disruptive to them at this time to have me interposed in their relationship".

[58] Mr. B and his mother created daily schedules for the children for the summer and the school year. She is committed to being a part of her son's plan for S and L. Without her, his plan could not succeed.

Assessing the plans

[59] As is its responsibility, the Minister has assessed each parent's plan. Acknowledging that its preference doesn't bind me, the Minister prefers Ms. B's plan on the basis that she is available to care for the children without the need for a third party caregiver, she has the EIBI programme training and she lives in the supportive environment of Alice Housing where she has ongoing counselling.

[60] Mr. B responded to each aspect of the Minister's recommendation. He said L can have more than one caregiver. L has been doing well, living at Akoma Family Centre where there are seven or eight children who may be as old as ten years old. Ms. Simmons didn't know how long a shift was at Akoma, but agreed that the workers changed at some point. She said that in the past a child with special needs had been accommodated at Akoma by designating one person on each shift to deal with the child. Ms. Simmons acknowledged that L doesn't need a consistent person – he needs a consistent routine.

[61] The EIBI programme ends when a child enters school, so Ms. B's training terminated in 2012. She had received all the training that programme could provide to her before the children were taken into care.

[62] Lastly, Mr. B noted that Ms. B's tenure at Alice Housing is limited. Unless she is approved for an extended stay, her time will expire in February 2016, which may require L to relocate, possibly requiring him to change schools. He also questioned whether the same level of support that L has at his current school would be available at Brookhouse School.

[63] From the limited descriptions I have of the children's visits with their parents, Mr. B has made greater progress in addressing the children's needs. He's modified meals and snacks to be more nutritious. The case aides both noted that Mr. B's parenting has improved: he corrects the children and structures the visits. Both parents are learning that S must be treated like a child, rather than being pushed into the role of a small adult who shares the burden of caring for L.

[64] Ms. B's parenting has improved, as well, though she doesn't appreciate that using a loud voice, tickling and rough-housing will escalate L's behavior. Ms. B is

less likely than Mr. B to set boundaries or follow up with consequences in controlling the children's behavior.

[65] As I make these comments, it is apparent that both parents are capable of providing appropriate care for L and S. Each parent's love for their children is also evident in the effort they have made since this proceeding began last year.

[66] I'll begin by focusing on L. Since the EIBI programme ended in 2012, the greatest source of undivided support for L is his school where he has a full time educational program assistant, access to a resource centre, occupational therapist and speech therapist. I call this "undivided support" because, of course, his parents' support is challenged to meet his needs and his sister's. The resources of Alice Housing and Brookhouse school for a child with autism and ADHD are unknown and can't be measured against the programming and support he's had for the past two years at the school in his father's neighbourhood.

[67] There is specific support for children at Alice Housing, but this support is focused on their recovery from domestic violence, and not on L's ADHD or autism.

[68] While Ms. B is available full-time to L, this can only happen if L changes schools. The constant care of a single caregiver is not required, it is sufficient if there is consistency in the care provided by multiple caregivers.

[69] S needs her parents to provide a secure and safe environment in which she can be a child. Mr. B has already come to appreciate those times when he has treated S inappropriately. The relationship between S and Ms. B is being re-developed as a parent/child relationship.

[70] Alice Housing could offer S counselling with regard to the conflict she's seen between her parents. I don't believe this is necessary, where S receives counselling from Mr. Belgrave.

Residence

[71] I conclude that the children should have their residence with Mr. B under the agency's supervision. With his mother's assistance, Mr. B can provide the structure and routine that L needs and the security and safety that S needs. His proximity to the school will provide the greatest support for L's autism and ADHD.

Access

The transition

[72] Since June 14, S has been having weekend access with her parents, alternating between their homes. L has not had overnight access yet. Anne Simmons anticipates that it will take between three and seven days for L to transition from foster care to a parent's home.

[73] Because of the children's differences, I am not taking the same approach to initiating their access with Ms. B. When the children are initially returned, S shall go to her mother's home for three days. During these three days (ideally they will include Thursday and Friday when Mr. B is not at work), L will be at his father's home. This will give L the opportunity to become re-established. Though Mr. B will be at home, his mother should be present for much of the time, so that L can become reacquainted with her. After these three days, S will be returned to her father's home. Again, ideally, this would occur on Sunday in the early afternoon, so that both Mr. B and his mother will be there for much of the day.

[74] Ms. B's access with both children will begin after they have had a full week with their father. When it begins, it will begin with a visit from Monday at 10 a.m. until Wednesday at 6 p.m. This will provide the children with a few days to become accustomed to their mother's home, rather than a brief visit.

Summer 2014

[75] This is the summer, so the children do not have the commitment of school. Ms. B is not working, while Mr. B is. In light of his current work schedule and to take the greatest advantage of each parent's available time, I order that, this summer, instead of alternate "weekends", Ms. B shall have access with the children from Monday at 10 a.m. until Wednesday at 6 p.m. (after supper) on alternate weeks. As well, the children will be with their mother from Monday at 10 a.m. until Tuesday at 10 a.m. during the week when they do not see her for two days. As a result, the children will be with their mother every Monday from 10 a.m. until Tuesday at 10 a.m. during this summer, once their access with her starts.

[76] The children shall be exclusively with their father for the five days before school resumes. This will enable L to return to his school year routine of going to bed and waking up before school begins and allow Mr. B the opportunity to outfit the children with supplies and clothing for school.

[77] I don't know how long the Minister will remain involved with this family. Pursuant to clause 45(1)(b) of the *Children and Family Services Act*, the Minister may be involved until September 2015, so I am providing a schedule that extends to that point.

Future summers

[78] It is difficult to design a parenting schedule for future summers, where I am trying to maximize the children's time with their parents, and I don't know what Mr. B's work schedule will be.

[79] If the Minister's involvement continues and the parents are unable to agree on a schedule which maximizes the children's time as I've done (ensuring that the children are not with their mother on those days their father works), the parties may return to me to deal with this. Mr. B will know his schedule in August and, in light of the court's schedule, the parties may want to schedule a half day next spring to address this issue now. They may cancel the time if it isn't needed.

[80] In any event, I require that the children spend the last five days before school starts exclusively with their father.

During the school year

[81] Both parents have proposed that the children spend alternate weekends with the other parent. Starting the first weekend after school has resumed and continuing until the first weekend after school has ended, I order that the children be with Ms. B from Friday at 4:30 p.m. (before their supper) until Sunday at 4 p.m. (before their supper) on alternate weekends. If the children's weekend with their mother is a long weekend, the extra day off school shall be spent with Ms. B.

[82] I am not making provision for mid-week access during the school year. A few hours' contact may be disruptive to L and overnight access is difficult given that the parents do not live in the same community.

Annual holiday schedule

[83] Annually, the school Christmas holiday will be divided so that the children will be with one parent for the first portion of the break (from the end of school until 1 p.m. on December 25) and with the other parent from 1 p.m. on December 25 until 4 p.m. two days before school resumes (for example, if school

resumes on January 4, then the children will be returned to their father on January 2). This will alternate annually. The children will be with their mother for the first part of the Christmas holidays in 2014. They will be with their father for the first part of the Christmas holiday in 2015. If the children are with their father for the second part of the Christmas holidays, they will simply remain with him until they return to school.

[84] In 2015, the children shall be with their father for the Easter weekend. If this schedule continued until 2016, I would order that the children shall be with their mother for this weekend (starting at 4 p.m. on Thursday and ending at 4 p.m. on Monday) in 2016 and even-numbered years.

[85] The children shall spend Mother's Day with Ms. B and Father's Day with Mr. B. If they aren't at the appropriate home that weekend, then the visit on Mother's Day or Father's Day will run from 9 a.m. until 4 p.m.

[86] March Break shall be divided so that the parent who is with the children for the first weekend of the Break will have them until Wednesday at 4 p.m. The other parent will have the children for the remainder of the week.

Transportation

[87] The children must be transported to and from their contact with their mother. Mr. B has been ordered to have no contact with Ms. B. Public transit, from Cowie Hill to Woodlawn, isn't feasible for L. I order that Mr. B's mother provide the children's transportation.

[88] If Ms. B is not comfortable with her mother-in-law knowing the location of her home, Ms. B may select an alternate transfer location or may arrange for someone else to transport the children.

Conclusion

[89] It bears repeating that both parents have achieved a great deal in the past ten months. Their children will benefit from the improvements they have made. My decision that S and L will live with their father does not mean that Ms. B is a lesser parent. It reflects that his plan, largely because it maintains the involvement of L's school, better meets the children's needs. Both parents have much to give their children.

[90] I encourage the parents to work through the agency to develop similar patterns in their homes. This will create a sense of security for S and predictability for L.

[91] I order that S and L be placed in the care of the father, who shall be supervised by the agency.

[92] The Minister has asked that I continue the terms of the current order as it relates to the parents' participation in services (outlined in paragraphs 4 and 5 of the order of May 13, 2014) and that S continue with her counselling for so long as required by her therapist, Michael Belgrave. The parents have not objected to these terms and I make this order.

Elizabeth Jollimore, J.S.C. (F.D.)

Halifax, Nova Scotia