SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *K.W. v. Nova Scotia (Community Services)*, 2014 NSSC 346

Date: 20140923
Docket: *Sydney* No. 081176
Registry: Sydney

Between:

K.W.

Applicant

v.

The Minister of Community Services and B.W.

Respondents

TO PUBLISHERS OF THIS CASE:

PLEASE TAKE NOTE THAT SECTION 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADINGS BEFORE PUBLICATION.

SECTION 94(1) PROVIDES:

Prohibition on publication
1. 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.

Editorial Notice	Identifying information has been removed from this electronic version of the judgment.
Judge:	The Honourable Justice Lee Anne MacLeod-Archer
Heard:	September 5 and 9, 2014, in Sydney, Nova Scotia
Written Release:	September 23, 2014
Counsel:	Jessica Drohan for the Applicant Tara MacSween for the Respondent B.W., Self-Represented

By the Court:

FACTS

[1] K.W. is the mother of S.W., born September […], 2010. S.W. was placed in the permanent care of the Minister of Community Services by order issued April 15, 2014. That order followed a written decision by the Honourable Justice Darryl W. Wilson which was dated April 10, 2014.

[2] Justice Wilson's decision followed a contested permanent care hearing which was held between November 28, 2013 and January 8, 2014.

[3] The Minister initially became involved with K.W. and her husband B.W. in May, 2012 when a protection application was filed and an order was sought for supervision of the child in the care of K.W.

[4] A contested protection hearing was held and it was determined on September 11, 2012 that S.W. was a child in need of protective services pursuant to Section 22(2)(b) and (d) of the ***Children and Family Services Act.*** On December 19, 2012 S.W. was taken into the care of the Minister of Community Services after a breach of the terms of the supervision order by the parents.

[5] After several reviews, the Minister of Community Services made a decision in November, 2013 to seek permanent care of the child S.W. The Permanent Care and Custody Order was issued on April 15, 2014. No access was granted to K.W. or B.W.

[6] On July 11, 2014 K.W. filed this application seeking leave to apply to terminate the permanent care and custody order. In support of her application K.W. filed an affidavit which was subsequently withdrawn and replaced with an "amended" affidavit. A hearing was held on September 5 and 9, 2014. B.W. did not participate in the application.

ISSUES

[7] Should the application by K.W. be granted for leave to apply to terminate the order for permanent care and custody of the child S.W. ?

LAW

[8] Section 48 of the ***Children and Family Services Act*** sets out the circumstances under which an order for permanent care and custody may be terminated. Matters to be considered in an application to terminate a permanent care order are set out in section 48(10) which states:

> Matters to be considered

(10) Before making an order pursuant to subsection (8), the court shall consider

(a) whether the circumstances have changed since the making of the order for permanent care and custody; and

(b) the childs best interests.

[9] Section 48 of the ***Act*** also places restrictions on applications to terminate an order by parties other than the Minister. Section 48(6) states:

Restriction on right to apply

(6) Notwithstanding subsection (3), a party, other than the agency, may not apply to terminate an order for permanent care and custody

(a) within thirty days of the making of the order for permanent care and custody;

(b) while the order for permanent care and custody is being appealed pursuant to Section 49;

(c) except with leave of the court, within

(i) five months after the expiry of the time referred to in clause (a),

(ii) six months after the date of the dismissal or discontinuance of a previous application by a party, other than the agency, to terminate an order for permanent care and custody, or

(iii) six months after the date of the final disposition or discontinuance of an appeal of an order for permanent care and custody or of a dismissal of an application to terminate an order for permanent care and custody pursuant to subsection (8),

whichever is the later; or

(d) except with leave of the court, after two years from

(i) the expiry of the time referred to in clause (a), or

(ii) the date of the final disposition or discontinuance of an appeal of an order for permanent care and custody pursuant to Section 49,

whichever is the later.

[10] The Court of Appeal in ***L.M. v. Children's Aid Society of Cape Breton***, 1999 NSCA 101 addressed the reason for leave provisions in the legislation. The court adopted the reasoning of Judge Levy in ***G.(D.L.) v Family and Children's Services of Kings County [1994] 136 N.S.R.(2d) 131*** wherein Judge Levy stated:

> It is evident from the entirety of Section 48 that the Legislature intended that **the Agency**, on obtaining permanent care and custody, **would have a six month "window" of time, free from court proceedings, to work with and possibly place children. That "window" is not to be interfered with unless a judge grants leave**.
>
> **An application to terminate a care and custody order of necessity interjects delay and uncertainty into an Agency's plans for children**. It may well be that this delay and uncertainty would compromise the best interests of the children. So too might the possibility of further assessments, [48 (8) (c)], and the distraction of Agency workers from the task of settling the child. If a parent could keep the Agency and its plans on a permanent hold simply by continuously applying for termination, much of if not the entire value of a permanent care and custody order would be lost. Certainly any undue delay in settling children or commencing the necessary "healing" process can prejudice a child's healthy development.
>
> Wisely, the Act seeks not to altogether forbid or preclude an application within the six month period. **There may be any number of circumstances that would justify proceeding with such an application to terminate. Imposing the necessity of, (and granting the opportunity to), obtain leave is a mechanism to secure balance and flexibility for appropriate circumstances." [emphasis added]**

[11] Both counsel addressed the reasons for the legislative leave requirement in their briefs. K.W. suggests the Court should take a purposive approach to the leave requirements. She argues that the purpose of the ***Act*** is not to expedite adoptions, but rather to protect children and promote the integrity of the family, even at this stage of the proceeding.

[12] The Minister rejects that argument, citing ***P.H. v. Minister of Community Services and R.W***. 2013 NSCA 83 in support of its position that once a permanent care order issues, there is a shift in focus from promoting the integrity of the family to establishing a permanent placement for the child. The Minister argues this serves to promote the best interests of the child post-permanent care.

[13] I agree. The Minister is mandated to promote the integrity of the family only insofar as the best interests of the child permit. Justice Wilson considered sections 2(1) and 13 of the ***Act*** in his Decision. He found that the Minister had met its duty under section 13, but the services offered had not alleviated the risk to the child. The Minister's statutory duty under section 13 of the ***Act*** does not continue after a permanent care order is issued.

[14] The Minister's evidence demonstrates that adoption planning was underway for S.W. at the time the application for leave was filed. All necessary steps had been taken, other than providing written notice to the proposed adoptive parents. That process has now been put on hold by reason of the leave application.

[15] The Minister notes that the appeal period for the permanent care order expired on May 30, 2014 and K.W.'s application was filed on July 11, 2014 leaving only 28 working days to place the child for adoption, which it argues is contrary to the intention of the legislation. As noted by Judge Levy in ***G.(D.L.)*** (supra) an application to terminate an order for permanent care and custody interjects delay and uncertainty into an agency's plan for children, which could in turn compromise the best interests of the children.

[16] In the case before me, K.W. applied less than five months after the expiry of the appeal period, thus section 48(6)(c)(i) of the ***Children and Family Services Act*** applies. In order for leave to be granted, K.W. must meet the test enunciated by Judge Levy as approved by the Court of Appeal in ***L.M.*** (supra). She must present "ostensibly credible and weighty evidence" that those deficiencies which lead to S.W. being placed in the permanent care of the

Minister have improved or are being "convincingly and meaningfully addressed with a realistic expectation of success in a reasonably foreseeable future".

[17] K.W. relies on the decision of Justice LeBlanc in ***E.S. v. Children's Aid Society of Cape Breton Victoria*** [2005] N.S.J.N.O. 269 which expanded on that test, holding that the risk which led to a permanent care decision need not be fully addressed in order for leave to be granted, rather evidence of progress may be sufficient if it "gives hope that the parents can achieve an acceptable standard of parenting by the date of a future hearing to terminate, such that it would then be in the best interests of the children to terminate the order." Justice LeBlanc suggests in ***E.S.*** (supra) that the question is holistic one of whether the circumstances as a whole justify the hearing of a termination application.

[18] In all proceedings under the ***Children and Family Services Act***, the Court is directed to give paramount consideration to the child's best interests. Factors relevant to that consideration are set out in section 3(2) of the ***Act*** which states:

> ***Best interests of child***
>
> (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 childs development of a positive relationship with a parent or guardian and a secure place as a member of a family;

> (b) the childs relationships with relatives;
>
> (c) the importance of continuity in the childs care and the possible effect on the child of the disruption of that continuity;
>
> (d) the bonding that exists between the child and the childs parent or guardian;
>
> (e) the childs physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
>
> (f) the childs physical, mental and emotional level of development;
>
> (g) the childs 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 childs 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 childs 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.

[19] In ***B.(R.) v. Children's Aid Society of Halifax***, 2003 N.S.C.A. 49 the Court of Appeal overturned a decision granting leave to apply to terminate a permanent care order which gave inadequate weight to the issue of delay and uncertainty associated with a termination hearing. The Court of Appeal stated at paragraph 43:

> [43] In addition to applying too low a threshold [on the issue of standing], I am of the view that the trial judge failed to give adequate consideration to the risk of delay and uncertainty that would inevitably result from permitting a termination application to be heard on the merits here. Such risk, when balanced against the merits of the appellant's plan, was simply too great to take. The child was nearly

> three years of age at the time of the hearing, and the inevitable delay of months at the least was too great a risk for her. [emphasis added]

[20] The Minister correctly points out that the burden of proof rests entirely with the applicant, who must establish that leave to pursue the application to terminate the permanent care and custody order is appropriate. The onus is proof on a balance of probabilities.

[21] In considering S.W.'s best interests, I note the following:

(a) Child-in-care worker Ryan Ellis testified that S.W. has a positive relationship with the foster parents and will be able to find a secure place as a family member in an adoptive placement; she has no special physical, mental, or emotional needs and is said to be well adjusted, meeting all developmental milestones. He also acknowledged that she enjoyed a positive relationship with K.W. before being taken into care.

(b) The child was taken into care at 27 months of age. Although there was a prior relationship with the paternal grandmother, she did not present a plan of care at the permanent care hearing and does not have current contact with the child. B.W. did not participate in the hearing.

No other relatives presented evidence of any relationship with the child.

(c) S.W. has had much interruption in her young life, and continuity in her care is paramount to her healthy development. An adoptive family has been chosen and would provide a secure permanent placement.

(d) K.W. attested in her affidavit that S.W. was baptized in the Catholic faith, but the foster parents have been taking her to a Protestant church. The religious faith of the proposed adoptive parents is unknown.

(e) There are no cultural, racial or linguistic heritage issues to be addressed.

(f) Justice Wilson has already determined that the agency's plan for permanent care with adoption is in S.W.'s best interests. That determination was made April 10, 2014.

(g) S.W.'s wishes cannot be ascertained as she is too young.

(h) S.W. has been in care for 21 months, which is almost half her young life.

(i) The final deadline for all disposition orders was extended in order to accommodate the hearing which concluded on January 8, 2014. If leave is granted, then a date for the hearing to terminate the permanent care order would have to be set, thus further delaying S.W.'s secure and final placement. A full hearing could take several days, as the leave application took two days. Although there is a statutory deadline for such a hearing, it would likely be scheduled several months hence.

(j) Justice Wilson concluded there was a significant degree of risk to S.W. in the care of K.W.

[22] In considering whether or not K.W. has adduced sufficient evidence to show some reasonable prospect of success should an application to terminate the permanent care order be held, I must consider the relevant test under section 48(10) of the ***Children and Family Services Act*** for termination. In ***M.D. v. Children's Aid Society of Halifax*** (1993) 123 N.S.R.(2d) 94 Judge Daley stated:

> **11** Section 48(10) requires the court to consider **whether the circumstances have changed since the making of the order for permanent care and custody and the best interests of the child.** The section does not say that there must be proof of a change of circumstances, that a change of circumstances is necessary before making a Section 48(8) order nor that the change must be the basis of any

> change in the order as suggested in other statutes. See for example, Section 17(5) of the Divorce Act, 1985. Section 48(10) formalizes the policy applied by the court before the amendment. The court had taken the position that if there is no change of the circumstances of the person applying for termination or change of the circumstances of the child, then there are no grounds for terminating the permanent order. **The change must be significant, relevant and a positive benefit for the welfare of the child to result in a termination order**. The reference to the child's best interests takes the matter to Section 3(2) which requires the court to consider the relevant circumstances enumerated in Section 3(2). **Section 48(10) is a two step process. First is the proof of a change of circumstances. This requirement is based on the assumption that the original order was made on proper grounds and was made in the best interests of the child, and should not be interfered with, except by appeal, unless the circumstances have changed. The second step is the application of the child's best interests rule to the change of circumstances. If it can be proven that the change has or will have a positive effect on the child, then the requirements have been met for the court to make an appropriate order. It is my view that a termination order requires proof of a change of circumstances before applying the best interests test.**
>
> **12** In this application for termination then, **the onus rests on the applicant-mother to prove on a balance of probability that there has been a significant, relevant and positive change of her circumstances or the child's circumstances. If she does that, then the next step is for her to prove that it is in the best interests of the child to be put into her care.** The circumstances listed in Section 3(2) must be taken into consideration along with any other relevant circumstances. The findings and basis for the order of Chief Judge Black need to be addressed by the mother to determine if there is a change in circumstances. [emphasis added]

[23] Judge Daley's decision was upheld on appeal (see ***M.D. v. Children's Aid Society of Halifax*** [1994] 130 N.S.R. (2d) 132).

[24] In arguing that there has been a change in circumstances which makes the termination of the order for permanent care and custody in the best interest of the child, K.W. cited the following considerations in her first affidavit:

1. K.W. and B.W. have initiated divorce proceedings and B.W. has moved to Alberta. She says they have had no contact since November, 2013. They filed for divorce by agreement and agreed that she would have sole custody of S.W. with no access to B.W. She changed her phone number in January, 2014 and is not friends with B.W. on Facebook.
2. Should she regain custody of S.W., she would not allow B.W. to have contact with the child.
3. K.W. has continued to engage with services, including counselling with Michael Bungay, who meets with her through the adult mental health clinic.
4. K.W.'s psychiatric care has been transferred to a new physician and her medication has been changed, leading to improvements in her presentation.
5. She has a stable support system through Transition House.
6. She accepted responsibility for criminal charges outstanding at the time of the permanent care hearing by pleading guilty and no new charges are pending; it should be noted that this affidavit was withdrawn and in her amended affidavit, K.W. discloses that she is

facing recent criminal charges as a result of incidents on May 18, 2014, which she says followed an exceptionally difficult week for her.

7. She copes better with difficult issues and events by speaking to a close friend and crisis staff.

8. She has enquired about addictions counselling through her probation officer, as alcohol was a factor in her current charges.

9. She has demonstrated a positive change in how she deals with challenging events in her life.

[25] K.W. argues that because three months passed between the date evidence was last heard in January, 2014 and the Decision of April 10, 2014, the intervening period should be considered in assessing whether there has been a change in circumstances. This submission suggests that the Decision might have been different if Justice Wilson had been aware of those changes. It is not my role to revisit the permanent care Decision. It is presumed to be correct when rendered, unless reversed or varied on appeal (see ***Wesson v. Wesson*** (1973), 11 NSR (2d) 652). K.W. did not appeal Justice Wilson's Decision. Further, Justice Wilson was aware that K.W. was accessing therapy and awaiting contact with a new psychiatrist, but found that "Any benefit she will

receive from this therapy will take a long time and certainly will not be completed within the time lines set out in the Statute."

[26] K.W. also points to the fact that B.W.'s circumstances have changed. As he did not participate in the hearing, I am unable to make any finding in relation to his circumstances.

[27] The Minister responds to K.W.'s claims as follows:

1. K.W. displays a lack of insight, telling workers only a week after the permanent care order was issued that her circumstances had changed.
2. The bulk of the evidence presented in K.W.'s affidavit was before Justice Wilson.
3. While there is no evidence of any ongoing contact between K.W. and B.W., they did have contact on January 30, 2014 after the permanent care hearing was concluded. K.W. did not disclose that contact in either of her affidavits.
4. K.W. acknowledged on cross examination that when she had contact with B.W. on January 30, 2014, police were called to B.W.'s home.
5. K.W. and B.W. were in an "on and off" relationship for some time prior to the permanent care hearing, and although K.W. has indicated

her divorce will be finalized on a number of occasions, she presented no evidence to suggest when that will be done.

6. K.W. engaged with Michael Bungay in May, 2014 and has only seen him on two occasions since her first appointment.

7. On her first appointment with Mr. Bungay, K.W. was taken to the emergency room because she expressed suicidal thoughts.

8. K.W. claims to have developed significant skills and supports since the matter was last before the court, but if any progress was made, it was wiped out by the incidents of May, 2014 when K.W. presented to the mental health crisis team on two occasions, the first occasion being May 7, 2014 when she expressed suicidal thoughts to Mr. Bungay, and the other on May 26, 2014 after she cut herself as stress relief and was taken by ambulance from Transition House.

9. K.W. told the health professionals at crisis that she needed better coping skills, had been cutting herself since age eight, and used this form of self-mutilation as an outlet for stress relief.

10. K.W. requested a transfer of her psychiatric file in December, 2013 and was only recently seen by her new psychiatrist. In the intervening six months, she was seen only once by Dr. Uhoegbu.

11. K.W.'s credibility is questionable, as she was less than forthright in her affidavit filed on July 11, 2014 which was subsequently withdrawn and replaced with an affidavit sworn on August 22, 2014. She originally did not reference any pending charges, despite the fact that she was charged with driving under the influence of alcohol, assault and breach of probation two months prior. When she filed her amended affidavit, she disclosed outstanding charges arising from a "single incident in May 2014", but did not disclose the nature of those charges.

12. K.W. has not demonstrated a positive change in how she deals with stressors in her life, cutting herself as recently May 26, 2014 and acknowledging to hospital staff that this is how she copes.

[28] The Minister argues that the evidence presented by K.W. in support of her leave application falls far short of "ostensibly credible and weighty evidence" that those deficiencies in her circumstances that lead to the permanent care order "have improved or are being convincingly and meaningfully addressed with a realistic expectation of success in [the] reasonably foreseeable future".

[29] In summary, the Minister rejects K.W.'s claim that she has demonstrated material changes which would make termination of the order for permanent care and custody appropriate.

[30] The Minister further points out that K.W.'s application for leave has already created a delay for the child, and argues that any further delay in placing S.W. permanently with her adoptive family would not be in the child's best interests.

DECISION

[31] I find that the Applicant has not met the onus on her to demonstrate ostensibly credible and weighty evidence that those deficiencies identified by Justice Wilson in his Decision granting permanent care and custody to the Minister have improved, or are being convincingly and meaningfully addressed with the realistic expectation of success in the reasonably foreseeable future. She has not presented evidence of changes which are significant, relevant and of a positive benefit for the welfare of S.W., even if one were to include the period between January – April, 2014 in assessing her claim.

[32] I accept that K.W. does not have to prove that the child should be returned forthwith. However, there must be sufficient evidence to warrant holding a hearing and placing the Minister's plans to place the child S.W. for adoption on

hold for a further period of time. In order to grant leave, I must be satisfied there is some reasonable prospect of success and I must balance the merits of K.W.'s plan with the potential negative consequences arising from holding a hearing, namely further delay and uncertainty in the child's life.

[33] In reviewing and rejecting K.W.'s claim that she has demonstrated a change in circumstances, I would add the following to the list presented by the Minister:

1. The evidence of contact between K.W. and B.W. on January 30, 2014 only arose as a result of cross examination by the Minister. She did not disclose that contact in either affidavit filed with the Court.

2. K.W. testified that B.W. called on January 30, 2014 and asked her to come to his home, but when she arrived there was a disagreement and he called police. At the time, K.W. was under conditions to refrain from contact with B.W., except with his express consent. The Minster had made it clear to K.W. that the main reason for its involvement was her ongoing contact with B.W. She and B.W. testified before Justice Wilson that they would remain separated if it meant the return of S.W. Yet three weeks later, with the decision on permanent care still outstanding, they were again having contact.

3. Justice Wilson in his decision stated:

> "[105] The evidence of K.W. and B.W. that they would not have contact with one another if it meant the return of S. to K.W.'s care is not credible. This is a recent commitment and made in the face of the child being removed permanently from their care. They both left open the possibility of reuniting at some point in time in the future if circumstances change. B.W. told the access worker that he intended his mother to apply for custody and they would resume care of S. after a six month period. In December, 2013, both parties were continuing to ask for couples counselling in order to help them communicate better."

4. I have similar reservations about K.W.'s claim that she will have no contact with B.W. in future. She says they are finalizing their divorce, that they no longer have contact and that she changed her phone number and email in January, 2014. Yet he was able to contact her on January 30, 2014, and she was aware of his move to Alberta in February, 2014, as well as his living arrangements there.

5. Justice Wilson found in his Decision that K.W. failed to recognize or acknowledge the risk posed by B.W. to S.W. I remain concerned with K.W.'s failure to accept responsibility for her choices in having B.W. involved with S.W. While she now states that she would not allow B.W. around the child, as recently as April 17, 2014 in a conversation with social worker Sherry Johnston, K.W. claimed she was never told to keep B.W. away from S.W. I also share Justice Wilson's concern

about the potential for B.W. to re-enter K.W.'s life. If S.W. is in her care, this poses significant risk to the child.

6. K.W. claims she has developed significant skills and supports through continued engagement with services since the permanent care hearing was concluded, but Justice Wilson in his Decision found that "Any benefits she would receive from this therapy will take a long time…" Mr. Bungay agreed on cross-examination on September 5, 2014 that there was a "long road" ahead for K.W. in addressing her mental health issues.

7. K.W. has shown a propensity for changing service providers when they do not agree with her. According to Justice Wilson's Decision, she stopped attending sessions with Ms. Durdle, who was working with her on the SAFE program, because they did not get along. She later started the program with Dr. Rule. Likewise, she terminated her relationship with Dr. Uhoegbu after he refused to prescribe a certain medication she requested. That decision meant that she had to wait six months for a new psychiatrist, who has only recently assumed her care. As a result, she has had limited psychiatric care in the past eight

months. The likelihood of consistent mental health care in future is tenuous based on this history.

8. K.W. did engage with Michael Bungay at adult mental health services but only started seeing him in May, 2014. Her first appointment was cut short because of the need to have her assessed at the ER and crisis. He did testify that he saw positive changes in her presentation, and that she was engaged in the service. He relied on her self-reports that she had acquired better coping skills, had family support from her sister and grandmother, and was experiencing less panic attacks.

9. K.W. continues to work with trauma therapist Chris Bailey at Cape Breton Transition House. Ms. Bailey testified she has worked directly with K.W. and had an opportunity to observe her interactions with others as well. She observed improvements in her interactions, noting that K.W. initially presented with a short fuse, a lot of anger, and little trust. She testified that K.W. now has improved self-worth, recognizes if she is in the wrong, and is trying hard to do "the right thing". Ms. Bailey obviously has a close and supportive relationship with K.W. and had difficulty acknowledging any negatives in K.W.'s stay at Transition House. She characterized K.W.'s departure as

typical after a long stay, even when presented with records from Transition House staff which indicate that K.W.'s departure was not voluntary. The records also reflect K.W.'s anger at being asked to leave.

10. Transition House has provided support for K.W. since the matter was last in court. Since January, 2014 she has stayed there on two extended occasions. Second stage housing has been offered to her, whether or not she regains care of S.W. She was a resident of Transition House in May 7 and 26, 2014 when she was seen at mental health services.

11. In her affidavit and in her sessions with Mr. Bungay, K.W. references family support and the support of friends. One friend who testified said she has seen improvements with K.W.'s functioning. She stayed with K.W. for several weeks after the permanent care decision was made, and took K.W. to her final visit with S.W. It was this friend who recommended she seek emergency care and call her counsellor after she cut herself on May 26, 2014.

12. B.W.'s mother was not called as a witness to confirm whether she provides any support for K.W. at this time. K.W.'s sister did not

testify. Her relationship with her father has broken down, as he allegedly assaulted her earlier this year and revoked his surety.

13. While K.W. benefited from the support of Transition House and a friend during the month of May, 2014, those supports were not enough to prevent two incidents of mental health crisis that month.

14. K.W. stated in her affidavit that she sought assistance through her probation officer for use of alcohol after the incident of May 18, 2014. She also indicated in her affidavit she plans to self-refer to an addictions counsellor. However, when confronted with a discharge form from Transition House which includes a recommendation for addictions counselling, K.W. denied this was a recommendation made by the Transition House staff for her, rather she testified this was a suggestion she made for all clients being discharged from Transition House. I do not accept her evidence on this point.

15. K.W. claims she has demonstrated a responsible and mature approach to dealing with the criminal charges pending against her. She plead guilty to three counts of assault and one count each of mischief, uttering threats and breach on January 21, 2014 and was placed on 18 months' probation. According to her affidavit, she did not want to

discuss her criminal charges during the permanent care hearing because they were still before the criminal court at the time. She was unwilling to make disclosure of the latest charges until she filed an amended affidavit on August 22, 2014. K.W. does not have the luxury of choosing whether or not to disclose charges in this case. The outstanding charges, particularly the nature of them, are relevant to the leave application and should have been disclosed by K.W.

16. K.W. has demonstrated some positive changes since January, 2014. However, overall the evidence is clear that she still deals with challenging events in a negative way. For example, she testified that the charges arising from the May 18, 2014 motor vehicle accident arose as a result of a difficult week for her, which included the death of a friend's child, a baby shower for another friend, and her last visit with S.W. While these are certainly unfortunate and difficult events which would prove challenging for any parent, K.W. has not demonstrated an ability to cope appropriately with such stressors. Drinking to relieve stress is not appropriate, and to date K.W. has not accessed services to address that issue. Cutting herself to relieve stress is likewise inappropriate. This has been a long-standing method

of coping for K.W. and although counselling may help address that issue, it is in its early stages.

17. The evidence of the police officers involved in the hospital incident of May 7, 2014 and the motor vehicle accident of May 18, 2014 is also relevant. They testified to an extremely angry, aggressive and combative K.W. who had to be subdued by two officers on May 7, 2014, and on both occasions a spit shield had to be used. On May 18, 2014 she was taken from the scene of the motor vehicle accident to hospital, where a four-point restraint had to be used. Office Oliver testified she only calmed down after an injection was given at the ER.

18. K.W. has demonstrated uncontrolled emotions when dealing with the Minister's staff. It is not unexpected that she would be angry with the social workers, but in her conversation with Sherry Johnston on May 7, 2014 she accused her of lying on the stand, and swore at her a number of times.

CONCLUSION

[34] For all of the above reasons, I dismiss the application for leave to apply to terminate the permanent care order issued on April 15, 2014. Each side shall bear their own costs.

MacLeod-Archer, J.