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IN THE FAMILY COURT FOR THE PROVINCE OF NOVA SCOTIA
Citation: Children's Aid Society of Pictou County v. A.J.G. , 2009 NSFC 26

Date: 20091222
Docket: FNGCFSA - 058974
Registry: Pictou

BETWEEN:

THE CHILDREN'S AID SOCIETY OF PICTOU COUNTY
Applicant

- and -

A.J.G. and J.A.G.
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:

94(l) 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 proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

Editorial Note

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

FNGCFAS058974

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DECISION

HEARD BEFORE THE HONOURABLE JUDGE JAMES C. WILSON,
Judge of the Family Court for the Province of Nova Scotia

HELD: Pictou, Nova Scotia on May 8th, August 4th and 5th, November 4th, 5th, November 25, November 30th and December 4th, 2009

DECISION DATE: December 22nd, 2009

COUNSEL on May 8th, 2009 -

Leisa MacIntosh for the Agency

Bryna Fraser for A.J.G.

J.A.G. Not present or represented

COUNSEL on August 4th, August 5th, November 4th, November 5th, November 25th, November 30th and December 4th, 2009

Lindsay MacDonald and Lorne MacDowell for the Agency

Megan Blaikie for A.J.G.

J.A.G. self-represented

[1] The Agency is seeking a permanent care order for the child S.D.G. born May*

, 2008. The Agency's claims the child is at risk in the care of either of the respondent parents and it would be in the child's best interest to be placed in the permanent care of the Agency for the purpose of adoption. The respondent mother seeks to have the proceeding dismissed and the child placed in her sole custody.

BACKGROUND

[2] The respondent A.J.G., age 23, had two other children who were placed in the permanent care of the Agency in December 2006. J.A.G. was the father of the younger child. With placement of the children in the care of the Agency, the parties separated for a short time. They reunited later in 2007 and S.D.G. was born May *, 2008.

[3] The respondents, fearing Agency involvement, had taken some effort to conceal the pregnancy. The Agency became aware of S.D.G.'s birth as a result of a referral that the respondent J.A.G. has been involved in an altercation with his father. Any contact with J.A.G.'s father was considered a risk given the father's extensive history. After learning of the birth, the Agency continued to have child protection concerns based on the prior proceedings. The Agency took the child into care but returned him to the parents subject to supervision a few weeks later. The respondents continued to live together with S.D.G. in their care until the respondent J.A.G. assaulted the respondent A.J.G. in February of 2009. This resulted in criminal charges being laid against J.A.G.

and the parties separated. The respondents continue to live separate and apart. The child continues in the care of the Agency.

[4] A.J.G. engaged in services and continues to exercise regular access. J.A.G. has generally not engaged in services and has had very limited access, none occurring over the last number of months. He attended parts of the hearing but presented no evidence nor plan of care.

EVIDENCE

[5] The difficult life circumstances of the respondent mother A.J.G. are set out in some detail in the earlier proceeding, *Children's Aid Society of Pictou County v. A.J.G. and J.A.G.,* (2006) N.S.F.C. 42 confirmed on appeal at *A.J.G. v. Children's Aid Society of Pictou County* (2007) N.S.C.A. 178.

[6] In summary, A.J.G. was placed in care at about age 12 as a result of a dysfunctional upbringing in her family of origin. She experienced many foster placements and struggles with depression. The respondent J.A.G. also comes from a difficult background, but has been a constant in A.J.G.'s life for the better part of the last 10 years. Unfortunately their life together seemed to recreate their own tragic histories. As a couple they made minimal progress with Agency services during the first child protection

proceeding. While A.J.G. is described as bright and has demonstrated a commitment to some services, their relationship has historically proved a hindrance to individual progress. It was noted by this court in the earlier decision at paragraph 47 that: “her decision (A.J.G.’s) to reunite with J.A.G. . . . after disclosing abuse . . . may be fatal in this case.” Because of their continuing toxic relationship, inconsistency in attending services and a lack of progress, the children were placed in permanent care in the earlier proceeding.

[7] After the decision in December of ‘06, the parties separated for some months. A.J.G. now admits there was domestic violence and J.A.G. was controlling and jealous. However, sometime around September ‘07 they did get back together. A.J.G. thought J.A.G. had changed and he continued to be one of the only constants in her life. She got pregnant almost immediately but testifies there was no physical violence during the pregnancy.

[8] Once the Agency became involved again, services were offered. Within a few weeks of Agency involvement the parties had moved out of the complex where the incident had occurred with J.A.G. ’s father. The respondents’ decision about their move was probably not well thought out. It was a rural location, A.J.G. was isolated and the apartment was demanding????, circumstances were not good The respondents have been accused by the Agency of making impulsive decisions and this choice and location of apartment turned out to be another bad move. While the parties engaged in services, the

Agency continued to have concerns about their level of commitment. The family skills worker was concerned that A.J.G. was tired, isolated and depressed. The worker suspected that there were problems in the relationship around communication and she was having more concerns about the possibility of domestic violence. A.J.G. now admits that the relationship was not good and through the fall of '08 the parties were barely speaking. At that time J.A.G. was employed and A.J.G. was on maternity leave. J.A.G. was not helping much with child care and A.J.G. was raising concerns with her therapist that J.A.G. may again be abusing alcohol or drugs. The parties apparently talked about their issues and A.J.G. was hopeful their situation might improve. However, things continued to worsen. It is now A.J.G. 's opinion, that because of his own difficult upbringing, J.A.G. is so emotionally impoverished that he is not capable of a supportive role as a partner or a nurturing role as a father.

[9] By early '09 the evidence is J.A.G. was becoming less engaged with services and A.J.G. was not making the progress the Agency felt she should. The family skills worker continued to have concerns around A.J.G. 's motivation, the level of her depression and whether or not her attachment with the child was appropriate. Given the lack of progress, the Agency was contemplating terminating the family skills worker and having a family intervenor put into the home. By this time the parties had moved again and were now living in *. It was while living in *, on or about February 4th, 2009 that an argument erupted between the parties. A.J.G. was now aware that J.A.G. was abusing

alcohol. The argument escalated and she was severely assaulted. In the process of the assault she was able to call 911 and police intervened. This lead to the apprehension of S.D.G. . As a result of J.A.G. 's criminal conduct he was charged and placed on house arrest. A.J.G. has cooperated fully with both the investigation and prosecution. J.A.G. is now residing outside the area and there is no evidence that their relationship will survive that incident. A.J.G. remains concerned about her safety and is fearful of J.A.G. .

[10] Following the assault, A.J.G. was encouraged by the Agency to reside at a woman's shelter. She didn't take this advice and after a short period obtained another residence in *. This move, like the previous ones was another decision questioned by the Agency. The house she chose was in poor repair and it soon turned out that the lady who was going to share expenses with her was a poor choice. Despite her questionable decision to move, A.J.G. has brought the property up to a satisfactory standard and appears to have a stable roommate. She has been in this location for a number of months and regularly exercises access there. It is a home that S.D.G. is now familiar with.

[11] Finances have always been a stressor for A.J.G. as well. There have been problems with rent and other bills, but at this time her rent and power is up-to-date. She testified is her car is paid for and her insurance is paid for. Despite some struggles, these issues have resolved themselves in a satisfactory manner.

ASSESSMENTS

[12] Dr. Susan Hastey was retained to do an updated parental capacity. Dr. Hastey completed an assessment of these respondents during the previous proceeding and they consented to her involvement this time. Dr. Hastey commenced her work in November of ‘08, but her final report and recommendations were not received until the following July.

[13] To complete her report Dr. Hastey reviewed all the Agency information including the records of collateral service providers. She held a number of interviews, observations and conducted a number of psychological tests. Following completion of her assessment, Dr. Hastey’s recommended S.D.G. be placed in the permanent care of the Agency for purposes of adoption. While she reported a positive interaction between mother and child that was spontaneously nurturing to the child, she continues to feel, as she did in her initial assessment, that A.J.G. lacks insight into her situation and minimizes her own responsibility. Dr. Hastey feels A.J.G. continues to make impulsive decisions, including multiple moves that lead to instability in her home environment. It is Dr. Hastey’s opinion that she continues to lack support, is manipulative and simply cannot function adequately under stress.

[14] By the time Dr. Hastey's report was received, A.J.G. 's representation had been taken over by new counsel. New counsel's first involvement was to ask the court for an opportunity to have Dr. Hastey's report reviewed. An order for production was granted and Dr. Hastey's file and material was turned over, some seven weeks later, to Dr. Gerald Hann. Dr. Hann produced a report highly critical of Dr. Hastey's conclusions. Dr. Hann's issues might be summarized under three headings:

1. Assessor's Qualifications
2. Best Practice Model
3. Clinical Judgement

[15] Assessor's Qualifications - Susan Hastey refers to herself as a consultant for parental capacity assessment, custody access assessment, individual and family counselling. Her letterhead discloses she has a PhD degree. Her C.V. reveals that she obtained her PhD in Educational Psychology from Florida State University in 1988. Her work experience has included Assistant Professorships at St. Mary's University, Mount Saint Vincent University and St. Thomas University. She has continued her education with post doctoral certificate programs, most commonly at Harvard University and as recently as December 2008. She does not refer to herself as a psychologist, is not registered with the Nova Scotia Board of Examiners in Psychology nor is she governed by any regulatory body. She has been qualified to give opinion evidence in the trial courts of this Province over the last 15 years.

[16] Dr. Hann, who had not reviewed Dr. Hastey's C.V. before authoring his

critique, suggested the use of the term “Doctor” by any individual who is not governed by a regulatory body is misleading. His concern is that individuals, including the courts, may be mislead into believing that Dr. Hastey is a regulated professional and competent to deliver mental health services.. More particularly it is Dr. Hann’s opinion that any parental capacity assessment includes a psychological component and that work should only be done by a person subject to a regulatory body such as the Nova Scotia Board of Examiners in Psychology or the College of Physicians and Surgeons for Psychiatrists. Dr. Hann feels these regulatory bodies ensure the psychological component of an assessment is competently addressed. He acknowledges that not all psychologists are competent to do assessments.

[17] Best Practice Model - The second major issue Dr. Hann raises is whether Dr. Hastey has followed a “best practice model” in preparing her assessment. Dr. Hann endorses the guidelines of the American Psychological Association. Dr. Hastey follows a model developed by the late Dr. Paul Steinhauer of the University of Toronto. It is apparent from the evidence that these different models share many core features and there is not before this court evidence to conclude that there is any single, right, or approved model. Specifically with respect to Dr. Hastey’s report, Dr. Hann claims there is an over reliance on psychometric data and some of the psychometric instruments she used are either inappropriate or out of date. Dr. Hastey testified she is authorized by the manufacturers of the tests that she conducts and Dr. Hann concedes there is no evidence any of the results were mis-interrupted.

[18] Clinical Judgement Dr. Hann has focused on some aspects of Dr. Hastey’s

work as demonstrating poor clinical judgement. Among others he questions whether Dr. Hastey has appropriately intergrated into her report the positive comments of A.J.G. therapist, psychologist Barbara MacLean or consultant psychologist Valorie Rule. In his opinion, given the serious nature of this application, which can terminate parental rights, the assessor should have focused more on A.J.G. 's success with services. While he acknowledges Dr. Hastey noted a positive relationship between A.J.G. and her son, he claims she has not addressed for the court the possible implications for the child if this positive attachment is disrupted. He claims her report is thin on child specific information and detail on the parent/child relationship. Finally, with respect to her use of psychological instruments, he claims there is inadequate explanation why particular tests were used or why the results may be relevant to her recommendations.

[19] Dr. Hastey did file a written response to Dr. Hann's critique. She does not accept his arguments and claims that all issues he raised including the favourable reports of other professionals, have been have been addressed in her report. Dr. Hastey believes her reports speaks to parenting capacity overtime whereas the favourable reports reflect a point in time. She continues to stand by her recommendations.

[20] Dr. Hann acknowledges that he did not do a parental capacity assessment on A.J.G. and therefore cannot offer any opinion on whether her parental rights should be terminated. However he states that to terminate A.J.G.'s parental rights based on Dr.

Hastey's report, would be both inappropriate and unethical.

[21] The evidence of family skills worker Nancy Morrell-Lamey heard on May 8th raised issues around Ms. G.'s level of psychological functioning. The Agency retrained psychologist Valorie Rule to do a consult on A.J.G. 's current functioning. It should be noted that Ms. Rule had also had prior involvement with A.J.G. in the earlier proceeding. At the time the Agency asked for a psychological consult for A.J.G., they were not yet in receipt of Dr. Hastey's final report.

[22] Ms. Rule met with A.J.G. in late May and early June. She also had the opportunity to review Agency documents and held collateral interviews with the family skills worker as well as A.J.G. 's therapist Barb MacLean, Dr. Hastey and the access facilitator .

[23] Ms. Rule in her earlier assessment of A.J.G. had diagnosed her as having post-traumatic stress disorder and queried a diagnosis of major depression or dysthymia. For this assessment Ms. Rule administered the Beck Depression Inventory which suggested that A.J.G. is experiencing minimal depression currently. The Beck Anxiety Inventory was also administered indicating she is experiencing no concerning anxiety symptoms.

[24] Based on her interview with key service providers as well as A.J.G. , Ms. Rule concluded that "A.J.G. 's mental status had improved when compared to 2006." Particularly, her effect and insight were improved. On observation A.J.G. was direct and articulate in her communication. She was assertive when challenged on clinical interview. The assessor noted that the absence of concerning current depressive and anxiety symptoms are in all likelihood the result of her consistent engagement in psychotherapy and pharmacological intervention. Ms. Rule noted at page 12 of her report:

> In summary, it appears that A.J.G. has made significant changes in the emotional interpersonal, employment, leisure, medical and self-care spheres of her psychological functioning. It is the consultant's opinion that she is currently psychologically stable.

She goes on to caution:

> The consultant cautions however, that this improvement is new and with further stressors, another dysfunctional relationship, or another significant lifestyle change, her psychological status may change. She has just begun to process her early life traumas and this component of her psychotherapy is new to her. By A.J.G. 's own admission, she is "taking it slow". Her stability in terms of mental health status has not been put to the test and this is an area for monitoring.

[25] In light of some of the observations noted by family skills worker Nancy Morrell-Lamey, the Agency also requested Ms. Rule observe A.J.G. and S.D.G. and to offer an opinion on the attachment relationship. On clinical observation the consultant noted:

> No significant concerns regarding the attachment relationship between A.J.G. and S.D.G. .

[26] Ms. Rule concluded her consult on attachment with the following:

> The consultant notes that the clinical observations of A.J.G. and S.D.G. occurred while she was psychologically stable, was employed, not in a dysfunctional relationship, involved in her community, and was participating in psychotherapy.

Ms. Rule added the final caveat at as follows:

> The consultant cautions that the current improvements evident in A.J.G. 's psychological functioning are new and fragile. It is possible that experience of acute stressors would trigger old mental health and lifestyle problems and interfere with her ability to offer her child a secure attachment relationship as described by Marchel above.

[27] A.J.G. has been involved in therapeutic counseling with psychologist Barb MacLean since September ‘08, having had prior involvement with her in ‘05-‘06. Ms. MacLean testified that A.J.G. is very different in this intervention. She is open, non-defensive and taking responsibility. She has been consistent in attending her appointments and recognizes that her life experiences have impacted her parenting. She acknowledges having made impulsive decisions and is now working hard to look ahead logically and consider consequences. She acknowledges there have been too many moves and too much instability. In Ms. MacLean’s opinion A.J.G. acted appropriately in calling the police when she was assaulted and Ms. MacLean believes A.J.G. is genuine in expressing finality to that relationship. Ms. MacLean has observed A.J.G. with S.D.G. on a number of occasions and she has been most impressed with her parenting. A.J.G. is very responsive to his needs and their interaction is most appropriate. It is Ms. MacLean’s opinion that she is managing quite well at this time and has a much more optimistic perspective.

ACCESS

[28] Since S.D.G. has been taken into care A.J.G. 's access has been supervised. Louise Crockett has been the supervisor since February '09 and access continues three times per week. From her testimony I conclude that access has gone well with both appropriate affection and engagement demonstrated. In Ms. Crockett's opinion S.D.G. is an easy child to be with and is generally in good spirits. The evidence suggests the condition of the home has improved over time and is tidy and appropriate during access visits.

AGENCY POSITION

[29] Carol Saunier-O'Brien is an experienced child protection worker who has know the respondents since their prior involvement. When the Agency became aware in 2008 that the parties were back together with a new child they had the same concerns as had existed previously. Because the respondents had not engaged in services subsequent to the termination of the prior child protection proceeding, they continued to have concerns about domestic violence, possible substance abuse by J.A.G. and A.J.G. 's ability to deal with parenting issues given her history of untreated depression and post traumatic stress.

[30] In addition to individual counselling, one of the major services introduced almost immediately was the family skills worker Nancy Morrell-Lamey. The presenting issues as Morrell-Lamey understood them were domestic violence, self-care for A.J.G. , household management, isolation and child care. She felt her two primary goals were to teach child nurturing skills and encourage A.J.G. in self-care. Ms. Morrell-Lamey tried to concentrate on giving A.J.G. insight and developing competencies dealing with these issues. She was concerned about communication issues in the relationship and felt that depression was a major issue because A.J.G. seemed to lack energy and lose interest in things.

[31] As noted earlier, J.A.G. was inconsistent with services up to the point of separation. Overall A.J.G. had better engagement, particularly with respect to personal counselling, but progress was slow in the early months. With confirmation of substance abuse and physical violence in February of 2009, the Agency position changed from supervision to temporary care. J.A.G. has been effectively out of the process since that time while A.J.G. has continued with her services and developed a plan of care.

THE PLANS

[32] There are only two options. The child is either returned to A.J.G. 's care or is placed in the permanent care of the Agency. While the Agency acknowledges A.J.G. has

made some gains, they accept the recommendations of Dr. Hastey that A.J.G. is still not functioning at a level that can provide a stable and nurturing home for S.D.G. . For those reasons the Agency is seeking an order for permanent care. There evidence is that S.D.G. is a readily adoptable child and this is the course of action that would be in his best interest. They would not support access because that would inhibit their ability to place him in the best home in a timely manner.

[33] A.J.G. presents a plan seeking to have the child protection proceeding dismissed and the child returned to her sole custody. Her position is that she has made major changes in her life and has demonstrated both her ability to improve as a parent and provide adequately for S.D.G. A.J.G. currently resides with her roommate in a three bedroom older home in *. Her roommate is a male who she has known for a number of years. She sought a roommate to help her manage the expenses. Her roommate M, Z., did not testify in this proceeding although he was in attendance every day. A.J.G. 's evidence is that they are not, at this time, in a romantic relationship. A.J.G. testified her priority has been making herself a stronger person so she can parent S.D.G. Only when those priorities have been properly addressed would she consider another relationship. Mr. Z. has custody a child from a previous relationship. He has no criminal record or history with child protection.

[34] A.J.G. has been employed at * for 2 ½ years and can arrange a flexible day

shift consistent with S.D.G.'s child care. She has inquired about childcare though a local agency and can have that service in place immediately. Her longer term plan is to commence Community College next fall with the goal of becoming a *. S.D.G. would be eligible to attend daycare at the Community College as long as she is a student there.

[35] A.J.G. testified that she is much more aware of a child's needs as a result of the services she has participated in. As compared to her previous proceeding where the youngest child had been in care since birth and the older child spent long periods with other caregivers, A.J.G. is much more attached to S.D.G., he having been in her care for the first nine months of his life and she has maintained her access contacts three times weekly since. It would be her intention, if S.D.G. is placed in her care to take medical leave from work, not because she anticipates her parenting being unusually stressful, but to be available to the child for a period of time to better facilitate this transition to her care.

HAIR FOLLICLE TESTING

[36] Because the Agency suspected substance abuse may be a contributing factor to the respondents' dysfunctional relationship, they requested the respondents participate in hair follicle testing. Initially counsel for the respondent A.J.G. objected to this testing on the grounds that it violated her *Charter Rights*. Prior to the charter hearing occurring A.J.G. withdrew her objection and participated. J.A.G. did not.

[37] As hair follicle testing is relatively new in this area, and this was the first time this evidence was challenged, the court requested expert evidence to assist in evaluating this procedure. Mr. Joey Gareri, Laboratory Manager for the "Mother Risk Program" Division of Clinical Pharmacology and Toxicology at the Hospital for Sick Children in Toronto testified. Mr. Gareri holds a M.Sc in Clinical Pharmacology and Bio-Medical Toxicology. He is currently in a Ph.D. program at the University of Toronto in Pharmaceutical Science. He has authored a number of scholarly articles and has published in a wide variety of professional journals. He has also been a frequent presenter at Symposiums throughout North America and Europe. He belongs to the Canadian Society of Clinical Pharmacology, International Society of Hair Testing and the International Association of Therapeutic Drug Monitoring. Mr. Gareri has been qualified to give expert testimony in the Superior Courts of Ontario, Queens Bench New Brunswick Family Division as well as the Supreme Court of Nova Scotia Family Division. Mr. Gareri was qualified in this case to give expert opinion evidence in the areas of clinical pharmacology, and toxicology and analytical toxicology. Mr. Gareri described at page 6 of the trial transcript, how hair follicle testing works.

> The drugs that are present in hair are incorporated through the blood supply to the follicle. So when a person takes a drug it distributes into their blood stream and it's distributed throughout their body, it goes to the brain to exert it's effect and the blood carrying that drug also nourishes the hair follicle providing it with proteins and energy to produce the hair itself. So drugs actually pass with these other biological molecules into the growing hair shaft and become fixed in the hair shaft that was growing at the time that the person was using. So as that section of hair continues to grow, it moves further and further away from the scalp. So in cases of isolated drug use we can estimate the timing of exposure, based on what particular section of hair was positive for a drug. It's primarily...hair analysis for drugs is primarily used in long-term substance abuse monitoring. It's

> particularly efficient in this because you can look at larger time windows than are available through urine analysis.

[38] Mr. Gareri went on to explain the process used by his lab to collect samples to ensure continuity of the chain of custody. The chain of custody requisition requests that the hair be tested for specific drugs only. His lab has the capacity to test for 11 or 12 different drugs.

[39] The length of the a hair sample is significant in determining the detection window. He testified as follows:

> The capture period or detection window of hair is dependent on the length of hair that's tested. One of the benefits of using hair analysis is that the time period of observation can actually be customized to a person's individual case. So, for example, if one is interested in substance abuse only over the last three months, then we would only test the three months closest to the scalp worth of hair growth. So in a context where somebody claims that they have been abstinent for a period of time, we can confirm that abstinence period specifically or we can go back further, depending on what the ordering party requires in terms of their investigation.

The theory behind determining the length of hair is based on the following evidence offered by Mr. Gareri.

> Well we recommend, for example, a buffer of at least one month between a person's reported abstinence date and the beginning of their detection window. Hair growth...the hair growth standard that's internationally accepted is one centimeter per month. Eighty-five percent of the population has hair growth between about .95 and 1.3 centimeters per month. So there is varied ability from one person to another. We assign an approximated detection window based on the length of hair. So if we were doing a three month sample *per se*, we would be looking at three centimeters of hair but that is plus or minus a couple of weeks. So depending on what needs to be determined, it's important that the test be designed appropriately. So, for example, in a case where somebody claims that they stopped using four months ago, I would recommend only looking at the most recent two months worth of hair growth or depending on...I would ask in that case, for example, the

> social worker what is the exact date of abstinence that, that person is claiming, and I would provide a recommendation as to how far back the testing should go to reflect that. Most often I'll actually recommend a segmental analysis where we look at actually two sections of hair. One section reflecting the period of use as a baseline to know what the hair levels are when this person is using, and then the period of abstinence would follow that as a comparative.

[40] The test for the capture period or protection period is further limited by the following:

> Well there is a 10 day delay between the sample collection date and the detection window because it takes approximately 10 days for hair to grow the...it's about three millimeters from the base of the follicle where the drugs are incorporated into the hair. It's actually protrude out of the scalp. Because we need about 50 or so hairs, we do not pluck them. They are cut. So there's that 10 day delay. So the detection window on a sample taken on July 10th would start at the end of June or the first day of July or so and go backwards at a rate of one centimeter per month depending on how long the sample was that was tested.

In addition to the length of hair Mr. Gareri determined that they require at least 10 milligrams of to do an analysis. For shorter capture periods more stands of hair will be required for the 10 milligrams.

[41] There are a number of variables that can effect test results. He testified as follows:

> There are effects of hair colouring. Extensive use of cosmetic treatments can reduce the concentration of drugs we find in hair. So the use of colouring can displace the drugs from the hair. So in individuals with coloured hair, you have a lower sensitivity. In our experience, it's still...more often we will still detect a regular user with heavily coloured hair. It's very rare that we have a case with known drug abuse that's totally negative in coloured hair. What most often happens is we see a concentration that's lower than we would expect if the hair were not coloured. <u>So every case has to be interpreted on an individual basis</u>. But in a case with coloured hair, it would...what I would state is it's important to consider that because the hair is coloured, isolated or infrequent use may not have been detected. But one cannot assume that there was any use simply because the hair's coloured and it wasn't detected in the absence of any other evidence. . . .

> Well the drugs that are detected in the hair primarily in the inner structure of the hair. So exposure to the sun or to UV radiation has a relatively little effect. Where external exposure has significant implications is with frequent passive exposure to drugs. So one application for hair testing that we commonly use is testing children's hair in homes where parents are allegedly using drugs frequently. In about 90% of cases where we have both children's and parent's hair and that are tested for cocaine, the children's hair will be positive if the parent's hair were positive. This is in child protection referred matters. So in cases where parents are regular users in the context of parenting, they have residues of drugs present on their clothing, on their hands and since they are frequently handling children, there's a transfer of drug from the parent to the child on the hair. And this can be detected to determine that a parent is using in the context of parenting versus claims, for example, of recreational use infrequently, external to the home. So a child's hair being positive will be so from the drug being ubiquitously present in their environment. The younger the child, more often the higher the drug concentration because they spend more time in the family home and they are also handled more frequently by drug-contaminated caregivers. So external contamination by drugs is a very important consideration. We also look at metabolites which helps us determine the difference between passive exposure and active use in adults. So the presence of metabolites that are only formed inside the body can help us determine if a parent was actually using or if they were regularly exposed passively to a drug. I say regular exposure because infrequent passive exposures are not detectible in hair due to the, for example, UV radiation and routine regular hygiene. So these are drugs from the external environment that are being deposited and attached externally onto the hair not in the inner structure as drugs incorporated through the blood. (Emphasis added)

Mr. Gareri also noted a caution in using hair follicle testing for marijuana detection.

> Certainly. The incorporation of marijuana into hair is much less efficient than other drugs such as opiates or cocaine. It's about a thousand fold lower. So individuals have to be using marijuana very frequently just in order to get any positive result in hair. The reverse is similarly true for urine. So while drugs like cocaine have a detection window of about three to five days maximum in urine, marijuana if a person's a regular user can still be present in their urine up to three or four weeks after they quit. So in terms of using hair analysis for detection of marijuana, a negative result does not provide you evidence of abstinence and a positive result indicates regular use of the drug; whereas, with a drug like cocaine, a negative result in hair would provide very good evidence of abstinence and a positive result, if low, would indicate infrequent use and as the concentration goes up would indicate a more frequent use. (Emphasis added).

[42] There are also significant limitations with respect to testing for alcohol.

> The alcohol also must only be tested in the first six centimeters of hair closest to the scalp, as per the methodology. So we're not looking at 15 months of alcohol use history, but rather just the most recent six months. Basically from January to June of 2009. Alcohol

> hair analysis is a little bit different than drug analysis. Primarily alcohol is a legal drug and it's also an indigenous compound found naturally in our body. So our body actually produces alcohol as a by-product of digestion and these metabolites of alcohol that we look at are called fatty acid ethyl esters or FAEE—can be present even in non-drinkers in small concentrations. So with alcohol testing, the presence or absence of FAEE is not enough to determine whether or not a person is regularly drinking heavily. Their level has to be above a certain cut-off. The cut-off for heavy drinking is 0.5 nanograms per milligram of FAEE in hair. So in this particular case, it's listed as negative, but there is a concentration next to it. What this means is that this result is negative for excessive drinking. This test is designed to pick up, or is capable of picking up regular, excessive consumption of alcohol. So it's positive in individuals who are heavy drinkers. People who are binging on a regular basis or drinking approximately four to six drinks per day. So in this case, the result is negative for regular heavy alcohol consumption. So it's indicating no evidence of excessive alcohol use between January and June of 2009 in this individual. (Emphasis added)

The results of these testing procedures for A.J.G. indicate that she was below the level of detection for any drugs and negative for excessive alcohol abuse. These results are consistent with A.J.G. 's self reports that she has no substance abuse problems.

THE LAW

[43] Based on the circumstance of this case, the following provisions of the *Children and Family Services Act* S.N.S. 1990 c. 5, as amended, are considered, starting with a portion of the Preamble:

> AND WHEREAS children are entitled to protection from abuse and neglect;
>
> AND WHEREAS the rights of children are enjoyed either personally or with their family; . . .
>
> AND WHEREAS the basic rights and fundamental freedoms of children and their

families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and of society's interest in protecting children from abuse and neglect;

AND WHEREAS parents or guardians have responsibility for the care and supervision of their children and children should only be removed from that supervision, either partly or entirely, when all other measures are inappropriate. . .

AND WHEREAS social services are essential to prevent or alleviate the social and related economic problems of individuals and families;

Purpose and paramount consideration

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.

(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

(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;

(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;

(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;

Services to promote integrity of family

13 (1) Where it appears to the Minister or an agency that services are necessary to promote the principle of using the least intrusive means of intervention and, in particular, to enable a child to remain with the child's parent or guardian or be returned to the care of the child's parent or guardian, the Minister and the agency shall take reasonable measures to provide services to families and children that promote the integrity of the family.

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

(a) improving the family's financial situation;

(b) improving the family's housing situation;

(c) improving parenting skills;

(d) improving child-care and child-rearing capabilities;

(e) improving homemaking skills;

(f) counselling and assessment;

(g) drug or alcohol treatment and rehabilitation;

(h) child care;

(I) mediation of disputes;

(j) self-help and empowerment of parents whose children have been, are or may be in need of protective services;

(k) such matters prescribed by the regulations. 1990, c. 5, s. 13.

Disposition hearing

41 (1) Where the court finds the child is in need of protective services, the court shall, not later than ninety days after so finding, hold a disposition hearing and make a disposition order pursuant to Section 42.

(3) The court shall, before making a disposition order, obtain and consider a plan for the child's care, prepared in writing by the agency and including

(a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of protective services;

(b) a statement of the criteria by which the agency will determine when its care and custody or supervision is no longer required;

(c) an estimate of the time required to achieve the purpose of the agency's intervention;

(d) where the agency proposes to remove the child from the care of a parent or guardian,

> (I) an explanation of why the child cannot be adequately protected while in the care of the parent or guardian, and a description of any past efforts to do so, and
>
> (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent or guardian; and

(e) where the agency proposes to remove the child permanently from the care or custody of the parent or guardian, a description of the arrangements made or being made for the child's long-term stable placement.

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;

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

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

(a) have been attempted and have failed;

(b) have been refused by the parent or guardian; or

(c) would be inadequate to protect the child.

Duration of orders

45 (1) Where the court has made an order for temporary care and custody, the total period of duration of all disposition orders, including any supervision orders, shall not exceed

(a) where the child was under six years of age at the time of the application commencing the proceedings, twelve months;

[44] The serious nature of the issue before the court has been addressed in *N.S. (Minister of Community Services) v. D.C. (1995) 138 N.S.R. (2d) 243*; (NSFC) [confirmed by Court of Appeal at (1995) 138 N.S.R. (2d) 241)] wherein Williams, J., then of the Family Court notes at paragraph 143 and 144:

> 143 The burden of proof in proceedings of this nature is on the agency. It is the civil burden of proof (C.A.S. of Halifax v. Lake (1981) 45 N.S.R. (2d) 361 (N.S.C.A.). The standard must, however, have regard for the seriousness of the consequences of a decision (J.L. v. C.A.S. of Halifax (1985) 44 R.F.L. (2d) 437 (N.S.C.A.) The placing of a child in the permanent care and custody of an agency is obviously a most serious matter.

[45] In discussing the use of services, Justice Bateman of our Court of Appeal has again offered direction in *Nova Scotia (Minister of Community Services) v. L.L.P.* [2003] N.S.J. No. 1 at paragraphs :

> ¶ 25 The goal of "services" is not to address the parents deficiencies in isolation, but to serve the children's needs by equipping the parents to fulfill their role in order that the family remain intact. Any service-based measure intended to preserve or reunite the family unit, must be one which can effect acceptable change within the limited time permitted by the Act. . . . Ultimately, parents must assume responsibility for parenting their children. The Act does not contemplate that the Agency shore up the family indefinitely. . . .

[46] Establishing the merits of any alternative plan of care submitted on behalf of the respondents rests clearly on the respondents and any plan must be supported by cogent evidence. In *Children's Aid Society of Halifax v. T.B.* [2001] N.S.J. No. 225, N.S.C.A., Justice Saunders offers the following commencing at paragraph 51:

> ¶ 51 The agency has a statutory duty to take reasonable measures to provide services to families and children that promote the integrity of the family (s. 13 CFSA). The court has its own responsibility to take into account such measures and alternatives as are applicable in the circumstances of the case, before removing the child from the care of a parent or guardian (s. 42(2) CFSA). Thus the court and the agency share a responsibility to see that reasonable family or community options are considered. But the burden of establishing the merits of the alternative proposed are squarely upon the proponent. It is the proponent who must satisfy what I would term a burden of persuasion. Only when specific arrangements have been conceived and put in place by the proponent can the viability of that proposal be assessed. . . .
>
> ¶ 53 The agency is not required to investigate each and every family placement proposal. The burden of persuasion is upon those advocating a competing plan to advance the most compelling and sensible alternative they can muster.
>
> ¶ 54 There is an obligation upon the person advocating a competing plan to present some cogent evidence with respect to it. In that way, the merits and viability of the proposal will have some foundation in fact which might then be adequately assessed by the trial judge. Should time permit and circumstances warrant, it may well be that the plan put forward as a worthwhile family placement option will require further investigation, perhaps in some cases a complete home study report. However, not every possible placement alternative will require such a response.

[47] Our Court of Appeal in *J. F. v. Children's Aid Society of Cape Breton (Victoria)* [2005] N.S.C.A. 101 made the following observations at paragraphs 17and 18:

> [17] The maximum time limits for a child welfare proceeding are set out in s. 45 of the **Act**: twelve months for children under six years of age and eighteen months for those between six and twelve years. At the end of the statutory period a court must either dismiss the proceeding or order permanent care and custody. The time frames within which the proceeding must be resolved are necessarily short in deference to the "child's sense of time," as is recognized in the recitals to the **Act**:
>
> > AND WHEREAS children have a sense of time that is different from that of adults and services provided pursuant to this Act and proceedings taken pursuant to it must respect the child's sense of time;
>
> [18] Orders for permanent care are not limited to situations where there is no hope of parental improvement. The question is whether adequate parenting can be achieved within a reasonable time frame. That period is presumed to be the statutory time limit (**Nova Scotia (Minister of Community Services) v. L.L.P.**, [2003] N.S.J. No. 1 (C.A.) (Q.L.)).

[48] And finally, In *The Minister of Community Services v. B.F., B.W., and Mi'Kmaw Family and Children Services of Nova Scotia* [2003] N.S.J. No. 405 our Court of Appeal at paragraphs 57 and 58 offered the following guidance with respect to time limits:

> ¶ 57 The Act clearly contemplates a judicial determination of the child's best interest. If passage of a time limit which is a milestone toward that trial caused the court to lose jurisdiction to determine the child's best interest, this would contradict the object of the Act.
>
> ¶ 58 This principle does not apply to a time limit which governs the contents of the order after the trial.

[49] In considering the evidence placed before it, the court must consider all evidence, but as noted by Warner J., in *Re Novak Estate* 2008, N.S.S.C. 283 at paragraph 37:

> 37 There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of a witness's evidence, and may attach different weight to different parts of a witness's evidence. (See R. v. D.R. [1996] 2 S.C.R. 291 at para. 93 and R. v. J.H., supra).

[50] Specifically with respect to the expert opinions of assessors, Rosco, J.A. of our Court of Appeal recently noted in *Ross - Johnson v. Johnson* 2009 N.S.C.A. 128 at paragraph 13:

> . . . the judge was not obliged to accept the assessor's recommendation. See: Wedsworth v. Wedsworth, 2005 NSCA 102, para. 30.

[51] The Supreme Court of Canada in *R. v. Mohan* [1994] 2 S.C.R. 9 dealt with the admissibility of expert opinion evidence. Sopinka J. noted at paragraph 17:

> 17 Admission of expert evidence depends on the application of the following criteria:
>
> (a) relevance; (b) necessity in assisting the trier of fact; (c) the absence of any exclusionary rule; (d) a properly qualified expert.
>
> (a) Relevance

[52] The court offered further guidance on the necessity issue at paragraph 22:

> However, I would not judge necessity by too strict a standard. What is required is that the opinion be necessary in the sense that it provide information "which is likely to be outside the experience and knowledge of a judge or jury": as quoted by Dickson J. in R. v. Abbey, supra. As stated by Dickson J., the evidence must be necessary to enable the trier of fact to appreciate the matters in issue due to their technical nature. In Kelliher (Village of) v. Smith, [1931] S.C.R. 672, at p. 684, this Court, quoting from Beven on Negligence (4th ed. 1928), at p. 141, stated that in order for expert evidence to be admissible, "[t]he subject-matter of the inquiry must be such that ordinary people are unlikely to form a correct judgment about it, if unassisted by persons with special knowledge"

[53] And finally, with respect to qualifying an expert the court noted at paragraph 27:

> Finally the evidence must be given by a witness who is shown to have acquired special or peculiar knowledge through study or experience in respect of the matters on which he or she undertakes to testify.

ANALYSIS

[54] Children are at risk and in need of protection when parenting is not "good enough" to protect them from harm. The courts have consistently stated that authorities do not have to wait for actual harm to occur before intervening. Children are at risk when parents lack the basic skills to provide a stable and secure environment. Conversely, children are not at risk if parents can protect them from harm by providing a stable and nurturing home even through they may fall short of optimal parenting.

[55] The Agency's concern for these parents was well justified based on the respondent's history. Both parents were compromised by their own life experiences. The court had previously found them not capable of "good enough" parenting and placed their children in care. There was little evidence that circumstances had improved much since the last protection proceeding when the Agency again became involved following S.D.G.'s birth. The respondents 's old struggles with service compliance and lack of progress was evident during the early part of this proceeding. The evidence suggests that through the

later part of 2008 and early 2009 A.J.G. was identifying a number of problems in the relationship. She had concerns with Mr. J.A.G.'s substance abuse, communication between the couple was difficult and she was again feeling isolated and unsupported in the relationship. The circumstances were ripe for the assault that occurred on February 4th, 2009.

[56] The assault is significant for a number of reasons. To that point there was strong evidence that this matter was unfolding like the previous protection proceeding. The assault confirmed to the Agency that this was a violent relationship and the respondents could not protect the child from harm and provide "good enough" parenting. The court believes that when this proceeding began, the Agency and various service providers hoped the respondents could make it work. The Agency plan changed with the assault. After the child was taken into care, the Agency plan was permanent care and the matter was immediately set for a contested hearing. A permanent care plan was filed before receiving the report of Dr. Hastey or even requesting the updated psychological assessment of Ms. Rule.

[57] The assault also marks the point where A.J.G. starts to move forward, independent of J.A.G.. She called 911 and actively supported his prosecution. She sought the support of Victim Services and was very involved in developing a safety plan. There is no evidence before this court that would suggest anything but a final separation of

these parties. While she did not follow the Agency's advice and move to the woman's shelter following the assault, she had a plan to keep herself safe. She admittedly acted impulsively in moving to another residence and initially choosing an inappropriate roommate, but she has been able to stabilize that situation over time. She continues to be employed and has a plan to improve herself through Community College. The June 2009 psychological assessment reported her to be much improved in her emotional functioning, even though that improved state was relatively new and fragile. Her therapist confirms that her improved functioning remains stable six months later.

[58] Assessments of A.J.G. have always noted her cognitive ability as a strength. She should be able to benefit from therapy. The evidence of her therapist and the independent psychological consult suggest she is doing that. Moreover, there an improved level of insight evidenced in her current circumstances. She shares her home with M. Z.. He is clearly a support and she has been up-front about that. He supported her by attending throughout this hearing, but did not testify. The concern of the Agency has always been that A.J.G. and J.A.G. had no support beyond each other, and that was clearly dysfunctional. A.J.G. has been able to articulate to the court that her success as a person and a parent depends on her not only having intellectual insight but being able to make choices and develop a plan that is not tied to an intimate relationship. . There is no evidence before this court to suggest that Mr. Z. is an inappropriate support. His role in A.J.G. 's life may change but she is able to articulate to the court that it is she, and she

alone, who must take responsibility for herself and S.D.G.

[59] This case is somewhat unusual in that there was both an enormous amount of evidence to consider and some particularly challenging procedural issues. The maximum 12 month disposition period provided by the legislation is frequently a challenge and in this case it was acutely so. The court acknowledges that time lines for this matter expired about a month a ago during the disposition hearing. It is therefore incumbent upon the court to either dismiss or place the child in care.

[60] Parental capacity assessments are frequently provided to assist the court, particularly in cases involving permanent care applications. Given the serious issues before the court, every effort must be made to bring the most informed perspective to the decision. The assessment process can nevertheless become part of the problem when they consume as much time as they did in this case.

[61] Dr. Hastey's parental capacity assessment commenced in November of '08 with the final report not being received until July '09. I appreciate some of the dynamics that were underway in this file (the parties separation, paternity issues and A.J.G. being investigated for cancer), but eight months is too long. While the court benefits from expert opinion, there are other interests that cannot be held hostage to the expert report. These include allowing the court to make timely decisions in the child's best interests and to have

the widest array of disposition options available to it.

[62] The delay in resolving this became further complicated by the unusual situation of having to replace both counsel because A.J.G.'s counsel was hired by the firm representing the Agency. This matter was slated for trial before the conflict developed, but with the delay in getting the reports, a change in counsel was necessary. New counsel were engaged and other issues arose including counsel's wish to have Dr. Hastey's report critiqued. The critique took longer then required because there was a seven week delay from the time the court issued an order to produce the file until the material was actually received for critique purposes. Again I have no explanation for the delay but those seven weeks become critical toward the end of this proceeding.

[63] While assessments are frequently requested and provide valuable and relevant evidence for the court, their roll should never be misunderstood. Expert opinions are evidence to be considered by the court like any other piece of evidence. Expert opinions do not replace the court's judgement. Expert opinions should not drive the process. When expert opinions, and the battle over the weight to be afforded them eat up so much of the disposition time, the court may become hampered in making the right decision in the best interests of the child. Decisions at the end of the dispositional period can be problematic in difficult cases. The risk to the child of terminating a positive attachment and denying the child the opportunity to grow up in his family of origin or placing the child back with a

parent who may yet again struggle are equally serious. The answer is clearly in having timely assessments presented so that there is opportunity to better tailor a disposition consistent with the evolving evidence. When the initial report is delayed, the process becomes compromised.

[64] A court case where the best interest of a child is at stake, is not a particularly good form to address what are really professional agendas. A substantial portion of Dr. Hann's critique, and perhaps his motivation for doing the critique, had to do with Dr. Hastey's qualifications as an unregulated service provider. There is certainly a public interest in seeing that this important work is done by qualified individuals. Whether the holder of a PhD degree who is not a member of a regulated health professions is misleading to the public should not be debated within the serious time restrains of a child protection proceeding. Both Dr. Hann and Dr. Hastey are on he Province's "list" for doing this work. It is not the "list" that qualifies an individual as an expert. The qualification of an individual as an expert remains within the discretion of the court and each court will make those decisions on a case by case basis dependant upon the academic qualifications and work experience of the witness. The opinions of the expert, once qualified, may be accepted or rejected by the court. It is the responsibility of the court to determine whether or not recommendations are consistent with other evidence before the court. The court appreciates that individuals coming from different disciplines and experiences may approach their professional responsibilities in different ways. There is no evidence that

any profession or individual has a monology on truth. In the end these are professional or clinical judgements and the trier of fact is responsible to give weight to the opinions as deemed appropriate in light of all other evidence.

[65] This court found Dr. Hastey qualified to give opinion evidence. She did not hold herself out as a psychologist and the court was under no misapprehension as to her status before the court. It would be obvious to any informed reader that Dr. Hastey, psychologist Rule or therapist MacLean are all qualified to give opinion evidence but all were performing a difference function and contributing a different piece of the puzzle. The wight to be given these different opinions or clinical judgement is determined by considering all other evidence that either supports or contradicts opinions. The issue in this case is not Dr. Hastey's qualification but her clinical judgement is consistent with all other evidence. The court must consider determining whether or not parenting in this case is good enough.

[66] This is not an easy case for a social worker, clinician or judge to decide. What is required is that the trier of fact approach the issue with an open and unbiased mind and allow the evidence to lead to a conclusion that is in the best interest of the child.

[67] The court directs itself to consider the philosophy of the *Children and Family Services Act*, particularly those sections dealing with the need to protect children from

harm and to respect the integrity of the family. The purpose of the *Act* is not to substitute good enough parenting for better parenting but to ensure that all parenting is good enough to protect children from harm. The court also acknowledges that it is the philosophy of the the *Act* that parents be provided with services that will enable them to maintain the children within the family of origin if at all possible. The court further understands that services are for a limited time and it is the responsibility of the parents to demonstrate progress so their children's lives can be stabilized and nurtured.

[68] This is not the same proceeding or circumstance that was before the court in 2006. S.D.G. is a different child and the court is no longer dealing with a couple, but a single parent who is psychologically much improved. She has engaged in services and progressed. She has not obtained the status of optimal parent but she has certainly utilized services to make her a better parent. The issue is simply whether she a good enough parent to keep S.D.G. safe and to provide him with a nurturing environment.

[69] It is frequently said in these decisions that life is full of challenges and uncertainties. There are no guarantees. In a case like this the court has to consider, as have some of the professionals involved in this case, that past behaviour may be the best predictor of future behaviour. Having said that, the *Children and Family Services Act* is built on the premise that services can provide the stimulus for positive change and that those who demonstrate a commitment to services and improve their behaviour should be

given the opportunity to discharge their parental responsibility and not stand forever condemned.

[70] In making this decision the court cannot be reckless or gamble with the child's future. Despite the progress A.J.G. has made, she will face many challenges. There is credible evidence before the court that she is now up to the task. The court must also consider the positive attachment between A.J.G. and her child and the risk to the child should that attachment be broken. There is also the risk that old problems could resurface. Dr. Hastey and the Agency continued to believe that old patterns will dominate. Psychologist Rule is cautious but acknowledges major positive changes at the time of her assessment. Psychologist and therapist MacLean testifies that A.J.G. is now a better person who is capable of parenting her child.

[71] The Agency plan in this matter dated May 7th, 2009 at paragraph 3 (a) contains the following statement: "in order for the child to be returned to A.J.G.'s care the Agency would require clear evidence of substantial gains being made by A.J.G. in all areas. Such evidence would be found in A.J.G.'s day to day actions, decision in parenting of her child and also from reports from counselors on topics such as ability to assess risk, ability to manager her post-traumatic stress order and depression and attachment history.

[72] In addressing the criteria as set out in the Agency plan, A.J.G. has disengaged from a dysfunctional relationship and presents as a single parent who is now stable and capable of meeting her child's needs. The evidence is that A.J.G. is attached to the child and they have a warm, appropriate relationship. She has no substance issues identified through her compliance with hair follicle testing, is medicated for depression and has strengthened herself emotionally through psychotherapy. She is employed, has an adequate home, child care and some collateral support. The child S.D.G. presents with no special needs and is described as an easy going and undemanding child. She had been consistent in maintaining access over the past 10 months while this matter has made its way to trial. She has been seeking a return of the child virtually since her child has been taken into care.

CONCLUSIONS

[73] The court is satisfied that the protection concerns established by the Agency at the commencement of these proceedings and at the time the children were taken into care have now been addressed. A.J.G. is no longer in an abusive relationship, is personally stable and offers a plan that adequately addresses all of the protection concerns. Her circumstances are not without challenge and the future is not guaranteed, but the Agency has not satisfied the court that S.D.G. is still in need of protection. It is the court's opinion A.J. G. has addressed her issues and offers a plan for adequate parenting. For

these reasons the protection proceeding is dismissed.

[74] S.D.G. will be placed in the sole custody of A.J.G. pursuant to the terms of the *Maintenance and Custody Act* without access to J.A.G.. The order will contain a provision that should J.A.G. make any application for access, the child protection authority in the area where A.J.G. is residing is to be notified.

[75] Counsel for A.J.G. has asked to be heard on the matter of costs. Should counsel be unable to resolve this, I will hear them by way of submission.

J.