FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. S.M.,* 2016 NSFC 3

Date: 2016-01-22
Docket: FTCFSA No. 091286
Registry: Truro

Between:

Minister of Community Services

Applicant

v.

S. M. and S.M

Respondents

Restriction on Publication: Pursuant to s. 94(1) of the *Children and Family Services act,* S.N.S. 1190, c.5.

Judge:	The Honourable Judge Jean Dewolfe
Heard	October 21, 28, 2015, November 2, 4, 2015 and December 8, 2015, in Truro, Nova Scotia
Counsel:	Spencer Dellapinna, for the Applicant Owen Bland, for the Respondent, S.M. Damian Penny, for the Respondent, S.M

By the Court:

Introduction

[1] This is an application by the Minister of Community Services ("the Minister") for an order for permanent care and custody, pursuant to the *Children and Family Services Act* ("the *Act*"), with respect to three children, ages 11, 10 and 9 respectively. The Minister's plan is to have the children placed for adoption without access to the parents.

[2] The Respondents are the children's parents. They seek the return of the children to their care.

[3] The children were taken into care on May 23, 2014. They have had supervised access with their parents since that time. The middle child, T., was initially placed in the same home as his sisters, but was moved to a separate foster home several months later. T. is now placed at the Wood Street Residential facility due to his behavioral issues.

Background

[4] Agency involvement with this family began in 2006. Between 2006 and 2014 there were numerous referrals to the Agency. All referrals related concerns as

to the cleanliness, clutter and safety of the Respondent's home and/or the children being dirty and unkept. In addition, other reports included concerns that the children were missing school, physical aggression by the parents towards the children, behavioural issues of the children, domestic violence and conflict between the family and their neighbors. Some of these referrals were substantiated, others were not.

[5] In 2008, the Respondents agreed to participate in services, but later changed their minds.

[6] In 2010, Agency involvement arose from the condition of the home and Ms. M's failure to obtain treatment for T. A Supervision Order was put in place in July 2010. During the Agency's involvement, behavioural issues were observed with respect to the children. The Respondents participated in Family Support although they were not fully cooperative. They also moved to a larger, cleaner home. The Supervision Order was terminated in March 2011.

Current Involvement

[7] The Agency's current involvement was initiated by a call in May 2014 from the principal of the children's school relating to an ongoing dispute between the Respondents' family and other families in the neighborhood. This involved

fighting at school, which the principal reported had been encouraged by the Respondents (based on comments by the children). The RCMP contacted the Agency in May to report an incident relating from this neighborhood conflict. The Agency received another call from the children's schoolthat T. was missing a lot of school.

[8] A home visit occurred on May 23, 2014. Photos taken by workers and their testimony reveals that the children were very dirty and unkept, and T. had open sores on his body. The home was in a deplorable condition. The photos taken at that time show that it was very cluttered and dirty. The sink and counter were overflowing with dishes. The workers noted a strong stench of cat urine and dog feces from the six cats and one dog they observed. The children were taken into care on that date.

History of Proceeding

[9] An Interim Order for temporary care and custody of the children was granted on May 29, 2014, and affirmed on June 19, 2014. On August 21, 2014, the Court determined that the children were in need of protective services pursuant to s. 22(2)(b)(g) and (j) of the *Act*. On August 26, 2014 the Court heard the

Respondents' application to have the children returned to them under a supervision order. This application was rejected by the Court.

[10] On November 13, 2014 the Court granted a Disposition Order maintaining temporary care and custody for the children. This was confirmed by review on February 12, 2015, March 26, 2015, May 21, 2015 and June 18, 2015.

[11] In February 2015, Ms. M. fired her lawyer. This resulted in a six week delay to allow her new counsel to review the file. On March 26, 2015, hearing dates were set for July 2015.

[12] Trial dates were deferred on several occasions, with consent, in order to allow second parental capacity assessments to occur.

[13] The statutory timeline for this proceeding expires on May 13, 2016.

Issues

[14] The issues are as follows;

1. Do the children remain in need of protection pursuant to the *Act*?
2. If so, can the risk of harm be adequately addressed within the statutory timeline?

3. If permanent care is ordered, would an order for access for the parents be appropriate?

Evidence

Minister's Evidence

Tanya Broome

[15] The Minister's evidence included therapy reports by Tanya Broome, Mr. M's counsellor, which were admitted by consent and were not challenged.

[16] Ms. Broome's reports noted that while Mr. M. engaged in counselling, she felt he lacked full understanding and insight into the issues leading to Agency involvement and tended to externalize blame for some problems.

Agency Workers

[17] The Minister submitted the affidavit of adoptive social worker, Suzanne Gardner, which was admitted by consent. In her affidavit, Ms. Gardner indicated that an access order post permanent care would reduce the chances of the children being adopted, as few prospective adoptive families were willing to agree to access post adoption. Ms. Gardner also noted that due to T.'s current behavioural

challenges, no prospective adoptive home would be available at this time. She indicated that when T.'s behaviours improved, prospective adoptive homes would be available.

[18] The Minister also submitted case recordings of the Agency's involvement with the Respondent's family. The Minister presented these as business records. The Respondents did not request the presence, for cross examination, of those who contributed to the case recordings but did not testify.

[19] The affidavit of Kellie Murphy, the initial intake worker, was admitted by consent. This affidavit, dated May 27, 2014, outlined the history of Agency involvement with the Respondent family and the circumstances leading up to the taking into care on May 23, 2014.

[20] The Minister submitted a number of affidavits of Agency employees Colleen Reddy, Holly White and Stacey Paupin. These workers testified and were cross examined.

[21] Stacey Paupin testified, and photos show, that T. had sores and eczema on his body when he was taken into care, and that although Ms. M. said that he had a standing prescription for cream to help it, it had not been filled in some time.

[22] Colleen Reddy testified as to her family support work with the Respondents and her observations of parental access with the children. She expressed concern that the parents did not appear to understand the emotional needs of the children and deflected her attempts to engage them on this issue.

[23] Colleen Reddy and Stacey Paupin observed access visits and read reports from other access visits. They both expressed concerns about access issues. In particular, both Respondents continually brought up emotional issues with the children. For example, telling the children that their pets missed them and a cat had run way, raising their grandfather's past illness and death and discussing it in detail, and criticizing the foster parents' care of the children. Ms. M. was frequently upset and crying in front of the children which led them to become upset. She also behaved rudely to the supervisors.

[24] In 2014 the parents attempted whispered conversations, in particular with K., and several "inadvertent" meetings with the children occurred in the community while the children were in the care of the foster parents. One such meeting in the summer of 2014 involved the parents being present on the opposite side of a fence around a private pool where the children and foster parents were visiting.

[25] In July 2015, the parents were resistant to T. being placed at Wood Street Residential Centre. Ms. M. raised the issue of his placement with T. and continued talking about it at an access visit which led T. to be upset and cry. Ms. Paupin asked Ms. M. to stop discussing the placement with T., but Ms. M. became angry and deflected the conversation by saying she wanted a new worker and that the Agency had not done anything for her. The Respondents have now expressed approval for this placement.

[26] Ms. Paupin also testified that an alternate counsellor had not been found for Mr. M. after Ms. Broome ceased her practice in May 2015 because trial dates were set for July 2015 at the time.

Applicant's Expert Evidence

[27] The Agency relied on expert evidence from Dr. Risk Kronfli, psychiatrist; Heather Power, psychologist; Susan Squires, psychologist; Tamara Zann-Roland, therapist; Laura Lang, psychologist and Janet Tomlinson, counselling therapist.

Dr. Risk Kronfli

[28] Dr. Kronfli was qualified to give expert evidence in psychiatry and psychiatric assessments. He prepared psychiatric assessments for both parents in September 2014. He testified that while neither parent has an active psychiatric disorder which could be identified, both parents have long standing maladaptive personality traits which are rooted in their own upbringing and which negatively influence how they respond to challenges and stressors.

[29] With respect to Ms. M., he indicated (p.14):

> "There are clear personality traits at play in addition to procrastination and lack of prioritization. This may be due to a lack of appreciation and lack of insight of how this impacts the family in general and the children in particular."

and

> "While (Ms. M.) does not appear to have a psychiatric disorder she clearly demonstrates personality traits that are indicative of passive-aggressive tendencies. Throughout her lifetime she has developed dysfunctional coping patterns that have affected her personal and emotional development and intimate and parenting relationships. The unfortunate part in all this is that there is a clear pattern of deception and an attempt to avoid blame, in addition to minimizing any wrong doing on her part."

[30] Dr. Kronfli recommended further exploration in a Parental Capacity Assessment, and treatment with Cognitive Behavioral Therapy or Dialectical Behavioral Therapy. He also was of the opinion that Ms. M. required long term supervision to monitor her progress, and parental training with regard to "assertiveness, setting boundaries and household management" (p.15).

[31] With respect to Mr. M., Dr. Kronfli had concerns given his history of drug abuse. In addition he noted (p.14):

> "Throughout his lifetime, Mr. M. has developed dysfunctional coping patters that have affected his personal and emotional development and intimate and parenting relationships. He has clearly suffered from lifelong attachment issues and anger problems related to his father, which have contributed to low self-esteem and aggression.
>
> There are a few indications, despite his attempts to minimize, that Mr. M. suffers from impulsivity, bad judgement and periods of excessive procrastination while avoiding or being unable to prioritize the important tasks in his life. His lack of ability to identify those priorities, together with a clear history of hyperactivity and school trouble, give rise to a possible diagnosis of Adult ADHD. This is complicated by substance use and emotional immaturity, together with some limited cognitive abilities.
>
> In addition, there is a clear lack of understanding of his role as a parent in setting boundaries and guiding his kids maturation and development."

[32] He diagnosed Mr. M. as having, "Adult ADHD in the context of substance use and some maladaptive personality traits, these are mainly antisocial and dependent traits". He recommended medication for Mr. M.'s Attention Deficit Hyperactivity Disorder, but was unsure as to whether psychotherapy could help, given Mr. M.'s cognitive limitations. He also indicated that parental training and longer term supervision would be needed if improvements were to be made.

[33] Dr. Kronfli summarized his findings with respect to both parents by questioning the ability of the M.'s, individually or together, to appreciate the impact of their limited parental capacity on the children's safety and development.

He noted that, "In the past, improvement was short lived and the willingness to be involved with services was unpredictable" (p.15).

[34] He felt that based on the maladaptive personality traits of the Respondents and their histories, there was a poor prognosis for change by the M.'s.

Heather Power

[35] Heather Power conducted a Parental Capacity Assessment dated November 7, 2014. She was qualified to provide expert evidence as a psychologist with expertise in the areas of psychological assessment and parental capacity assessments.

[36] Ms. Power interviewed the parents, reviewed the Agency file, contacted collateral sources, conducted psychological testing of the parents and observed access visits. Ms. Power found that both parents lacked insight into their psychosocial functioning, including the reasons for Agency involvement. They consistently minimized and justified their problems. This led to Ms. Power having serious concerns as to, "…their ability and willingness to identify, acknowledge and address substantial child welfare concerns, to discuss their histories and present difficulties openly and honestly with service providers, and to engage with

the Agency in a non-defensive and helpful manner that would serve the interests of their children" (pp.58,59).

[37] At the time of the Parental Capacity Assessment (November 2014), the parents believed that the condition of their home was the most significant concern regarding their ability parent. In Ms. Power's opinion however, the concerns were more extensive. In her opinion, the parents were poor role models in terms of interpersonal relationships. They minimized T.'s special needs, and dealt inappropriately with the children's school and teachers. They took complaints to the school board instead of working with school staff. There was also conflict with neighbors and family members, which the M.'s consistently blamed on others.

[38] With respect to the emotional needs of the children, Ms. Power noted that the parents' behavior in access (e.g. focusing on the fact that the children are not at home, negatively discussing the foster home) made it more difficult for the children to settle in their foster placements.

[39] Ms. Power diagnosed both parents with personality disorder traits, for Ms. M., with antisocial features and narcissistic features. She identified Ms. M. as having "victim stance thinking". She states, (p.63):

> "Ms. M. presents with highly maladaptive beliefs/attitudes/behaviours that interfere with her overall functioning, including her ability to attend to her home

> and place her children's needs above her own. She has a pervasive and substantial lack of insight into her own functioning and appears to use defence mechanisms such as denial, minimization and justification to explain or dismiss her difficulties…Due to her substantial lack of insight, she is unlikely to make much meaningful progress in treatment."

[40] With respect to Mr. M., Ms. Power found him to have, "prominent maladaptive personality traits, namely, antisocial and dependent traits as well as narcissistic features, which are likely to interfere with his long term functioning" (p.63).

[41] She notes a failure by both parents to recognize problems in their relationship despite documented instances of domestic abuse. They minimized and provided inconsistent reports with respect to an occasion when Ms. M. hit Mr. M. with what Mr. M. described to Ms. Power as a "frypan". This was described by Ms. M. to Ms. Power as a "plastic coffee bottle".

[42] Ms. Power recommended permanent care for the children, despite the fact that there was, at that time, 18 months remaining in the statutory timeline. Further, she found that the children's access with their parents was more detrimental than beneficial to the children and recommended that the Agency consider reducing access at that time.

Susan Squires

[43] Susan Squires was qualified as a clinical psychologist entitled to give expert evidence on assessment of children, and dealing with issues such as trauma and attachment. She prepared Needs Assessments for all three children in February 2015.

[44] She found that the oldest child, K., had a higher than average level of anxiety. She noted that the girls were aggressive with each other, which needed to be addressed. She also identified that K. put her family's needs ahead of her own and in effect, seemed to take on a parenting role, resulting in anxiety.

[45] She found that the girls needed routine, structure and a positive, safe, and clean environment. She recommended that they both attend school regularly and that their caregivers work positively with the school.

[46] With respect to T., Ms. Squires identified his aggression as a significant concern, in particular in relation to his sisters. She noted that his behavior is consistent with Oppositional Defiant Disorder or Conduct Disorder. His poor reading comprehension had not been recognized and addressed and she felt his lack of attendance at school in previous academic years has "negatively impacted

his achievement" (p.32). He was far below average in areas of language, self-direction and socialization.

[47] She recommended T. attend school regularly, have an Educational Assistant and Individual Program Plan in all subjects, and participate in Occupational Therapy and psychiatric assessments. It would also be important for T.'s caregivers to work in cooperation with his school.

[48] Ms. Squires recommended that all three children engage in therapy.

Tamara Zann-Roland

[49] Tamara Zann-Roland provided counselling for the children. She was qualified to give expert evidence in the area of child counselling. She described T. as having very significant speech problems and anger issues. The girls shared with Ms. Zann-Roland that T. had been aggressive with them. Both girls shared that they appreciated the lack of fighting in their foster home, referring to conflict between their parents and by their parents with their neighbors. Both girls shared examples of T. being abusive to animals at home and in their first foster home.

[50] Later in their sessions the children revealed sexualized behavior between K. and M., and T. and the girls. K. also revealed that she had witnessed sexual activity between her parents.

[51] Ms. Zann-Roland indicated that the girls were open and articulate and appeared to have adjusted well to foster care.

Laura Lang

[52] Laura Lang provided counselling to T. in 2015. She was qualified to provide expert evidence in the area of clinical psychology with a focus on children and youth. Anger management was her primary focus. She agreed with Susan Squire's diagnosis of Oppositional Defiance Disorder and Conduct Disorder from her own observations. In her opinion, children with Oppositional Defiance Disorder need a stable, consistent home with rules, limits and flexibility. T.'s caregivers would need an awareness of behavior management techniques, and an awareness of T.'s memory difficulties which results in the need for step by step reminders to keep him on track.

Janet Tomlinson

[53] Janet Tomlinson provided counselling to Ms. M. She was qualified to provide expert evidence in the area of clinical therapy for areas including mental health. Ms. M. attended counselling with Ms. Tomlinson for over a year (September 2014 to October 2015). She testified that she had worked with Ms. M. on Cognitive Behavioral Therapy (to combat negative thoughts), general support and communication.

[54] Ms. Tomlinson noted that Ms. M. had made progress since December 2014 in terms of insight into Agency concerns. However, she recommended continued counselling for Ms. M. and more work on communication.

Respondents' Evidence

[55] The Respondents each provided affidavits, testified and were cross examined. In addition, Ruth Mitchell, a counselling therapist with Bridges in Truro, testified with respect to her work with Mr. and Ms. M.. Mary Jane Jeffery, a counsellor at the Women's Resource Centre, who had worked with Ms. M. since May 2014, also testified. A letter from Dr. Deanna Field, Ms. M.'s family doctor was entered by consent, without cross-examination.

Ruth Mitchell

[56] The parties self-referred to Bridges. Ms. Mitchell described that they worked primarily on relationship issues and in particular, communication between them. They also worked on coping mechanisms in the face of stress. Ms. Mitchell felt that their communication had improved significantly, and also noted their comments regarding a new commitment to cleaning. She felt that they had gained insight into the negative effect of their dirty home on the children.

Mary Jane Jeffery

[57] Ms. M. also self-referred to the Women's Resource Centre and worked closely with Ms. Jeffery in group and individual programming for well over a year. Ms. Jeffery testified that she found that Ms. M. to be less resistant to suggestions, a bit more independent, more respectful in her communication and much calmer than she had been at the outset.

Mr. M. and Ms. M.

[58] Mr. and Ms. M. responded to a number of the children's comments as reported to others. They denied that T. had ever been cruel to the animals. They refused to consider the possibility that T. and K. had been sexually inappropriate in

their home, indicating that the children were supervised all the time, so such incidents could not have occurred. They acknowledged that K. had walked in on them when they were being intimate in their bedroom with the door shut.

[59] They blamed many of the children's comments and behaviors on the children being upset at not being able to be at home, or as a result of their care in foster homes. They continue to attribute many of T.'s behaviors to having him moved from his first foster home, further aware from his parents. They continued to accuse the Agency and foster parents of providing inadequate care for the children. They complained of inadequate assistance by the Agency workers during access (e.g. paras.44 and 92 of Ms. M.'s affidavit). They do not acknowledge initiating conversations which have upset the children, but say that the children initiated these conversations. This is directly contradicted by the access supervisors and Ms. Reddy.

[60] In response to Ms. White's description of K.'s hair being matted and having twigs, dirt and dead lice in it, Mr. M.'s affidavit asserts that K.'s hair easily tangles.

[61] The M.'s admit they told T. to "stand up" for himself with the neighborhood children, but blame T. for misinterpreting this comment as encouragement for physical aggression.

[62] Mr. and Ms. M. testified that they now appreciate the impact of their dirty, disorganized home on the children. However, in their affidavits the continue to minimize the state of the home (e.g. para. 105 of Mr. M.'s affidavit) and the state of the children (e.g. para. 99 of Mr. M.'s affidavit). They also testified that their home is now clean. They say the air quality in the home will be improved by installation of a new air purifier system, which they said had been ordered. They indicate they only have one cat and one dog now.

[63] Mr. M. testified that he had not taken medication for Attention Deficit Hyperactivity Disorder as recommended by Dr. Kronfli. He explained that he thought Dr. Kronfli would contact his family doctor. However, Dr, Kronfli testified that he always tells clients to have their family doctor contact him if medication is required.

Dr. Deanna Field

[64] Dr. Deanna Field's letter responded to a letter from Dr. Komissarova. Dr. Field confirmed that Mr. M. had raised the issue of a possible ADHD diagnosis with her, but he was not currently on medication.

Olga Komissarova

[65] The Respondents obtained a second parental capacity report from psychologist Olga Komissarova. Ms. Komissarova was qualified as an expert in clinical psychology and parental capacity assessments.

[66] Ms. Komissarova was paid for her services by Nova Scotia Legal Aid. She initially began her assessment only with respect to Mr. M. due to funding restrictions. She was later engaged to complete an assessment of Ms. M. as well.

[67] Ms. Komissarova's first language is Russian, and this was obvious in reading her assessment and in her testimony. At times she was difficult to follow. She testified that she administered different tests than those given by Ms. Power. She did not review file materials dated prior to of Ms. Power's reports, as she had relied on Ms. Power's summaries.

[68] Ms. Komissarova did not speak with Dr. Kronfli or Ms. Power. However, she testified that she agreed with their respective diagnoses of the Respondents. She viewed her assessments as adding to the understanding of the Respondents' functioning. She agreed that the Respondents had personality disorders. She also determined that Mr. M. had Attention Deficit Disorder (as opposed to Dr. Kronfli's Attention Deficit Hyperactivity Disorder concerns) and learning issues.

[69] Ms. Komissarova diagnosed Ms. M. as having a personality disorder, with a "poor prognosis" for treatment. As she notes, (p.26):

> "(Ms. M.) does not have a social support system and rely (sic) only on people who (sic) she trusts, specifically her partner, her counsellor and a couple of people she calls friends…This is why direct intervention would not produce positive outcomes, as she acts defensively and unassertively, thinking that professionals and the Agency are not supporting her."

[70] Ms. Komissarova testified that she believed Ms. M. required at least one year of Dialectical Behavioral Therapy and Mr. M. required a year of Attention Deficit Disorder coaching and medication to see if this provided improvement in his functioning.

[71] Ms. Komissarova also felt it was possible that high stress may have enhanced the parties' pathological features.

[72] Ms. Komissarova reported on conversations she had had with Agency workers Ms. Reddy, Ms. Paupin and Ms. White, all of whom testified that Ms. Komissarova's report of what they had told her was not an accurate reflection of what they had actually said. Ms. Paupin testified that Ms. Komissarova spoke to her only with respect to Mr. M., and that Ms. Komissarova focused on the sexualized behaviors of the children. Ms. Reddy also testified that Ms. Komissarova was focused on Mr. M. and questioned Ms. Reddy's qualifications in providing family support work. Ms. White testified that, contrary to Ms. Komissarova's report of their conversation in reference to the children's sexualized behaviors, she had told Ms. Komissarova that the children had "poor" boundaries (not "increased" boundaries as reported by Ms. Komissarova), and that she did not say that the behaviors were age appropriate (as reported by Ms. Komissarova). Also, Ms. White denied saying that T. was getting better at managing his behaviors under supervision of Mr. M. (as reported by Ms. Komissarova).

[73] Ms. Komissarova described how, in May 2015, she attempted to meet with the Respondents in their home, but had to leave due to an asthmatic reaction, which was attributed to mold in the home. Mold was cleaned by the Respondents and Ms. Komissarova was able to return to the home in early June. At that time,

Ms. Komissarova noted that the basement was not clean and she noted excess items in the home and old garbage items in the yard.

[74] In June 2015, Ms. Komissarova observed a visit with Mr. M. and T., and a visit between the Respondents with all three children. These were generally positive.

[75] She did note that during the visit she observed, Ms. M. made, "occasional bitter comments towards access workers" and set limits for the children, "when access workers reminded her to". Also, she noted that the girls "tuned in" to their mother's mood fluctuations during the visit.

[76] With respect to parenting, Ms. Komissarova's concludes with respect to Ms. M. (p.27):

> "Regarding parenting, the results show (Ms. M.) is able to monitor and respond appropriately to the children's behaviors, however, she will struggle with consistency of efforts that needed to be put in providing safe and healthy environment for (her) children. Therefore she would benefit from a positive guidance and support."

[77] Ms. Komissarova testified that she believed Ms. M. required at least one year of Dialectical Behavioral Therapy and Mr. M. required a year of Attention Deficit Disorder coaching and medication to see if this provided improvement in his functioning.

[78] Ms. Komissarova also felt it was possible that high stress may have enhanced the parties' pathological features.

[79] Despite her diagnoses, her acceptance of the opinions of Dr. Kronfli and Ms. Power, and her review of Ms. Squires' reports, she recommends that K. and M. be returned to the Respondents' care, "based on (K. and M.'s) psychological needs" (p.27).

[80] In her testimony, Ms. Komissarova explained that this recommendation with respect to K. and M. was based on her observation of a bond between the girls and their parents during access visits.

[81] Ms. Komissarova's recommendation as to the return of the girls was subject to Mr. and Ms. M. continuing to receive parenting education "from a professional source available in their area" (p.27). However, in her testimony she clarified that parenting education separate from the Agency would be best, and admitted that she did not know if such education was available.

[82] With respect to T., Ms. Komissarova recommended he be placed for adoption with a family that is well trained in behavioral management, and in a home that is suitable for a child with asthma. She also recommended monthly access with the Respondents and his siblings post adoption.

Law

[83] This application is made pursuant to the *Act*.

[84] The Court is required to make a disposition that is in the child's "best interests": S. 42(1). The factors which the Court must address in reaching this determination are set out in S. 3(2):

> "Where a person is directed pursuant to this Act except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:
>
> (a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of the family;
>
> (b) the child's relationships with relatives;
>
> (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
>
> (d) the bonding that exists between the child and the child's parent or guardian;
>
> (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
>
> (f) the child's physical, mental and emotional level of development;
>
> (g) the child's cultural, racial and linguistic heritage;
>
> (i) the merits of a plan for the child's care proposed by an agency, including proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
>
> (j) the child's views and wishes, if they can be reasonably ascertained;
>
> (k) the effect on the child of delay in the disposition of the care;
>
> (l) the risk that the child may suffer harm through being removed, 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 circumstance."

S. 42(2) provides:

> "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 failed;
>
> (b) have been refused by the parent or guardian; or
>
> (c) would be inadequate to protect the child."

S. 42(3) states that:

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

S. 42(4) provides that:

> "The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably unforeseeable time not exceeding the maximum time limits based on the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c.5, s.42"

[85] The Minister must prove on a balance of probabilities that there continues to be a substantial risk that the children will suffer harm pursuant to Section 22(2) of the *Act*.

[86] The test which must be applied is not whether other plans for the child will provide the best parenting, but rather whether the parents can provide "good enough" parenting without subjecting the children to a substantial risk of harm.

Analysis – Issues 1 and 2

[87] The Court has been provided with a great deal of expert opinion, including two parental capacity assessments prepared by qualified psychologists.

[88] The Court is persuaded by Heather Power's report. It is balanced and thorough, and accords with the evidence of Dr. Kronfli, and the totality of the other evidence heard by the Court.

[89] Counsel for the Respondents argue that Ms. Power's report is dated, and that their clients have progressed significantly since November 2014. They rely on the evidence and reports of Ms. Tomlinson who provided therapy for Ms. M., the report of Ms. Broome who provided therapy for Mr. M., the testimony of Ms. Jeffery who provided counselling to Ms. M., and the testimony of Ms. Mitchell who provided couples' counselling.

[90] Ms. Tomlinson's testimony and Ms. Broome's report indicate that the parties had made some progress towards recognizing Agency concerns. However, Ms. Tomlinson recommended continuing therapy.

[91] Ms. Mitchell and Ms. Jeffery had positive things to say in terms of the progress that both Respondents have made. However, their counselling did not provide Cognitive Behavioural Therapy or Dialectical Behavioural Therapy for Ms. M. as recommended by Ms. Power, Ms. Komissarova and Dr. Kronfli. Their interventions were primarily supportive in nature.

[92] Dr. Kronfli, Ms. Power and Ms. Komissarova are all of the opinion that Ms. M. has a personality disorder or personality disorder traits. All recommend continued counselling for her. In July 2015, Ms. Komissarova recommended at least a year of Dialectical Behavioural Therapy or Cognitive Behavioural Therapy for Ms. M..

[93] Mr. M. has not followed up with Dr. Kronfli's or Ms. Komissarova's recommendations that he try Attention Deficit Hyperactivity Disorder/Attention Deficit Disorder medication to improve his functioning.

[94] The Respondents' own statements and behaviours in recent access visits clearly support Ms. Power's assessment as to their ability to parent. Ms. Power

reviewed the access notes from visits and counselling reports which were received after the date of her report (November 2014). She noted that while it appeared that Ms. M. and Mr. M. had begun to verbalize insights into their past parenting, negative behaviours continued.

[95] The Court notes that in February 2015, Ms. M. admitted to Ms. Tomlinson that she needed to be mindful of how she reacts in front of the children. Yet, in July 2015 she negatively reacted to T.'s placement at Wood Street Centre Residential without regard to T.'s feelings, despite attempted intervention by Ms. Paupin. This reflects a marked lack of emotional control.

[96] Ms. Power also noted that in access visits Ms. M. continued to focus on her negative emotions, identifying them and discussing them with the children, and in effect, looking to the children to fulfil her emotional needs. On review of the access reports, I agree with Ms. Power's assessment in this regard.

[97] Ms. Komissarova testified that her recommendation to return the girls to the Respondents' care rests primarily on her observation of Mr. M. in two access visits, and Ms. M. in one. On this basis, as well as her review of the access reports from the other visits, she believed that there is a "close bond" between the girls and their parents. However, she does not realistically address the ability of the parents

to meet the needs of the children as identified by Ms. Squires. She appears to be unaware as to whether the services she recommends are available to the parents in the community , and she ignores the Respondents' lack of follow through with services in the past. She expresses her opinion that the parents' personality issues and Mr. M.'s Attention Deficit Disorder will require lengthy treatment, well beyond the statutory timeline, but appears not to understand or consider this restriction.

[98] I accept Ms. Squires' uncontroverted evidence as to the needs of these children for routine, structure, a clean home, regular school attendance and caregivers who will work positively with the school. In addition, T. requires a great deal of specialized care.

[99] Ms. Power and Ms. Komissarova both recommend that T. not be returned to the Respondents' care. Both recognize that his needs are too great for his parents to address. The Respondents admit that T.'s needs are best met at this time by residing at the Wood Street Residential Centre. T.'s special needs have not been adequately addressed by his parents in the past. His involvement in speech therapy did not occur consistently until he went to school, and was discontinued by his parents at times. T. is a child, who at age 10, can barely be understood by those

outside his family. The parents' minimization of T.'s special needs, while well intentioned, has caused this young boy to not receive the help he needs.

[100] The M.'s mistrust and poor coping skills led the children to miss significant amounts of school which has negatively impacted on their educational achievement.

[101] The Respondents claim that they now realize the home was not fit for the children to reside in, and they provided photographs to show that the home is now decluttered and clean. However, it is troubling that as late as May 2015, approximately one year after the children were removed from the home, Ms. Komissarova reported excess clutter and items which needed cleaning, and found the air quality such that she had to leave. The Respondents have been able to clean up the home in the past, but without a "watchdog", i.e. Agency involvement, any improvements have been short lived. There is no evidence that Ms. M. has adequately addressed her personality disorder so as to be able to prioritize her children's care and stop procrastinating, or that Mr. M. has adequately addressed his disorganization.

[102] I accept Dr. Kronfli and Ms. Power's poor prognosis for change in the Respondents. Throughout the proceeding, and in their most recent affidavits and

testimony, the Respondents have continued to blame others, deflect criticism, and misrepresent or misinterpret events and conversations. Ms. M. has continued to be uncooperative and adversarial, and both parents continue to have little insight into the challenges facing their children, or their needs.

[103] I accept that the parents dearly love their children, and that the children love their parents. However, the M.'s parenting has been inadequate due to ingrained personality traits. The home in which these children have lived has been continually disorganized and dirty. They have lived with continual conflict between their parents, between neighbours and family members and their parents, and among themselves.

[104] It is clear from all the evidence that Mr. and Ms. M. are poorly functioning individuals who cannot provide adequate care and guidance for their children or obtain the assistance and services they need.

[105] I find that these children will be at significant risk of emotional and physical harm due to neglect if returned to their parents' care, pursuant to s.22(2)(g) and (j) of the *Act*. There continues to be a real chance of harm to these children.

[106] I cannot accept Ms. Komissarova's recommendation that K. and M. be returned to their parents' care, given the severity and long term nature of the

parental personality disorders, their lengthy history with the Agency, and their lack of improvement despite Agency services in 2010-2011, as well as during this proceeding.

[107] The statutory timeline is approaching, with less than four months remaining. I find that there is no realistic chance that the Respondents can make the necessary improvements in their parenting within the statutory timeline.

[108] No family or community placements have been presented to the Court.

[109] The Court finds that all reasonable services to promote the integrity of the family have been attempted and failed. Mr. M. complains that no counselling was arranged for him after May 2015. However, I find that this would have been inadequate to protect the children in any event.

[110] I accept the Agency's plan for permanent care and custody as being in the best interests of these children, and find that there is no less intrusive option that will adequately protect the children from harm.

Access

[111] The parents seek ongoing access to the children.

[112] The Plan of Care of the Minister is that children will be placed for adoption without access to the Respondents. The evidence of Suzanne Gardner, adoption worker, is that an access order would restrict the adoption pool for the children.

[113] Section 47(2)(a) and (d) of the *Act* provides as follows:

> "47(2) Where an order for permanent care an custody is made, the court may make an order for access by a parent or guardian or other person, but the court shall not make such an order unless the court is satisfied that
>
> > (a) permanent placement in a family setting has not been planned or is not possible and the person's access will not impair the child's future opportunities for placement…
> >
> > …(d) some other special circumstance justifies making an order for access"

[114] The Nova Scotia Court of Appeal considered s.47(2)(d) of the *Act* in **Children and Family Services of Colchester County v. K.T.** 2010 NSCA 72 at paras. 39-41:

> "39 Therefore, from my reading of s. 47, three conclusions relevant to this appeal are clear. First, the Agency effectively replaced the natural parents. This puts the onus on the natural parents (or guardian) to establish a special circumstance that would justify continued access. Second, by the virtue of ss.47(2)(a) and (b), an access order must not impair permanent placement opportunities for children under 12. Section 47(2)(c) is consistent with this. It provides that if no adoption is

> planned then access will be available. This highlights the importance of adoption as the new goal and the risk that access may pose to adoption. Third, for children under 12, the "some other special circumstance" contemplated in s.47(2)(d), must be one that will not impair permanent placement opportunities.
>
> 40 Therefore to, rely on s.47(2)(d) as the judge did in this appeal, the (special) circumstances must be such that would not impair a future permanent placement. When then would s.47(2)(d) apply? Consider for example a permanent placement with a family member which will involve contact with the natural parent. Presuming that the adopting parents would be content with that arrangement, the adoption would not be deterred. See **Children's Aid Society of Cape Breton-Victoria v. M.H.**, 2008 NSSC 242 at para. 25.
>
> 41 In short, access which would impair a future permanent placement is, by virtue of s.47(2), deemed not to be in the child's best interest. This represents a clear legislative choice to which the judiciary must defer."

[115] There are no special circumstances so as to justify access post permanent care. The Minister is planning to place these children permanently for adoption. I find that access would impede the children's opportunity for a permanent placement. There will be no access except for a final visit as arranged by the Agency.

Jean Dewolfe/JFC