IN THE FAMILY COURT OF NOVA SCOTIA

Citation: C.G. v. P.D, 2010 NSFC 23

Date: 20101007
Docket: FNG MCA 61186
Registry: Pictou

Between:

C.G.

Applicant

v.

P.D. and J.G.

Respondent

DECISION

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

HELD: Pictou, Nova Scotia August 19th, 2009; October 21st, 2009; April 12th, 2010; June 7th, 2010; June 30th, 2010; August 19th, 2010; September 1st, 2010 and September 21st, 2010

DECISION: October 7th, 2010

COUNSEL: C.D. on her own behalf;

Roseanne Skoke for P.D.

[1] This is an application under the *Maintenance and Custody Act*, R.S.N.S. 1989, c. 160, as amended, for primary care of the child J.J.D. born November 9th, 2000. The applicant is the paternal aunt and the respondents are the biological parents. The respondent P.D. no longer resides with the respondent J.G. who has taken no part in these proceedings. The applicant has had the primary care of J.J.D. for over four years.

[2] The respondent P.D. lost custody of J.J.D. and his brother more than six years ago when they were placed in the permanent care of Mi'Kmaw Family and Children Services following a child protection proceeding. At that time the respondent mother was not able to adequately parent the children due to addiction and other parenting deficits. Initially the children were in foster homes including extended family of the respondent P.D. The Agency subsequently placed the children with the applicant C.G. With the knowledge of Mi'Kmaw Family and Children Family Services, C.G. moved to British Columbia for employment. While living there she made a further move to Alberta for employment/medical reasons. During this time placement of the older child with C.G. broke down because of the child's behavior, and he was returned to the day to day care of Mi'Kmaw Family and Children Services where he remains. While the application

was living in western Canada she obtained a provincial custody order for J.J.D. without the consent of Mi'Kmaw Family and Children Services. She subsequently relocated to Nova Scotia and Mi'Kmaw Family and Children Services applied to the Court to terminate the permanent care order for J.J.D. because they felt there were no protection concerns with the applicant and she wished to have primary care of J.J.D. confirmed with her.

[3] C.G. is 36 years old and is employed as a rehab therapist with a Regional Health Authority. She moved to Digby in May of 2009 to take this employment. She is separated from the father of her three children, two early adolescents and a baby born in January of 2009. She has been in a relationship with B.G. for more than a year. B.G. is 35 years of age and has two children from a previous relationship who are frequent visitors in their home. B.G. is steadily employed in the fishery and has no criminal or child protection history. He has a large extended family in the area.

[4] After the applicant had returned to Nova Scotia, Mi'Kmaw Family and Children Services had arranged for P.D. to have supervised access. A number of visits between the respondent P.D. and J.J.D. were held in the early months of

2009. Reports filed with the court and the evidence of the access facilitator suggests access went quite well despite there having been no contact for a few years.

[5] At the time the Agency applied to terminate the permanent care order, there were at least two issues to be resolved between the parties. C.G. had just accepted employment in the Digby area which meant she would be moving from Pictou County making access more difficult. There was also the issue of supervising access. C.G. sought the continuation of supervised access while P.D. was seeking extended and unsupervised access. Given the parties inability to resolve these issues, P.D. applied for custody. An interim order was granted whereby C.G. would continue to have sole custody and P.D. would have access alternating weekends, during the day, unsupervised. It was hoped that Mi'Kmaw Family and Children Services would help facilitate access, but this did not materialize.

[6] Access has not worked out. Almost immediately each party was accusing the other of undermining the arrangements. P.D. accused C.G. of interfering with access to prevent J.J.D. reconnecting with his birth family. P.D.

alleges C.G.'s frequent moves while J.J.D. has been in her care have caused J.J.D. to lack a sense of home or belonging. She has raised issues about C.G.'s family stability and suggested C.G. is only in it for the money, without ever identifying what financial benefit there might be.

[7] C.G. claims that P.D. does not really understand J.J.D.'s needs. She accused P.D. of undermining his placement with her by speaking negatively about her to J.J.D., telling J.J.D. he was not loved by C.G., or involving J.J.D. in adult issues by suggesting he will soon be living with his mother back on the reserve. C.G. questions whether P.D. has improved all that much from when the children were taken into care. While she has apparently undergone a successful methadone program to deal with her addiction issues, she is still receiving medication for emotional issues and C.G. suggests she does not have the resources to properly support J.J.D.

[8] After hearing the initial day of evidence, the court requested psychologist Valorie Rule prepare a needs assessment to assist the court in resolving this complex issue. Ms. Rule testified that J.J.D. is stuck between two people he cares about. He is deeply sad and emotionally compromised. He feels

pulled in both directions and unable to win. He does not know how to deal with it. He does not know who he can trust. It is Ms. Rule's impression J.J.D. needs to be in a place where he belongs and as of the date of her assessment in October 2009 , he did not feel he belonged anywhere. While recommending the current placement with C.G. be maintained, she felt access should increase and that J.J.D. needed contact with P.D. She concluded her report as follows:

> In summary, both C.G. and P.D. appear child focused and it is obvious that they care for J.J.D. and want what is in his best interest. I am however, concerned with the subtle alienation that appears to be occurring between C.G. and P.D. and how that impacts on J.J.D., forcing him to be a child caught in the middle between two adults whom he loves. Perhaps of more concern are the number of relocations J.J.D. has had in his young life. Prior to being placed with C.G. he reports being in five foster homes. Since then, it appears he has been moved approximately eight times. Although research suggest that frequent relocation is not necessarily negative, J.J.D.'s perception is that these have been negative experiences in his life. He is a young boy who has suffered a great deal of loss in terms of biological family, each foster home he left, each physical home he left, loss of pets, loss of friends, frequent school changes, and perhaps more importantly the loss of consistent contact with his biological mother. J.J.D. clearly perceives that P.D. has made improvements in her life and he articulates a desire for consistent contact with her.
> It is my impression, that J.J.D. is compromised in various areas of his functioning to the extent that it would be appropriate to recommend a custody assessment rather than the current child needs consultation. In particular, the focus of such assessment should focus on the allegations made by C.G. and P.D. against each other, in particular the level of risk they may pose to J.J.D.'s well-being. It is my opinion that this would meet J.J.D.'s best interest.

[9] A parental capacity assessment was prepared by Meredith Burns during November, December 2009. While the report was being prepared, there continued to be problems with access and reports that J.J.D. was being further

compromised by the battle over his care. On one occasion in the fall of 2009 J.J.D. made a disclosure which P.D. referred to Mi'Kmaw Family and Children Services. Upon investigation by Mi'Kmaw Family and Children Services the complaint was not substantiated, and placement continued with C.G. Access problems continued.

[10] Ms. Burns' report recommended the applicant be awarded sole custody and that unsupervised access be immediately terminated. It was recommended that P.D. engage with a registered professional therapist with expertise in the area of attachment theory, who is able to assist P.D. with understanding the dynamics involved when a child is placed in the middle. She noted the importance of insuring that alternate placement environments are not competing with each other.

[11] The respondent P.D. did not accept the recommendations of Ms. Burns. Unfortunately, and almost immediately upon the filing of her report, Ms. Burns was not available to the court for a number of months because of a serious illness within her own family. At the same time, C.G. was taking steps for J.J.D. to be seen for supportive therapy in Digby. The recommendations she was receiving were that access for J.J.D. should be supervised and infrequent. As a result, there

have only been a few access visits over the past number of months.

[12] There is substantial evidence that P.D.'s circumstances have improved since J.J.D. was removed from her care. P.D. appears to have overcome her addiction issues, she has been in a stable relationship for approximately three years, she has taken courses, gained employment, and she has a new child who is being appropriately parented by herself and her partner. Her family physician testified on her behalf and while the physician has never met J.J.D., she has no current child care concerns about P.D. at this time. It is P.D.'s position that she has demonstrated sufficient progress that she and J.J.D. should be given a second chance.

[13] Ms. Burns in making her recommendations for sole custody to C.G. recognizes that placement of J.J.D. with C.G. is the status quo and there is evidence to support C.G.'s position that J.J.D. has clearly improved his behavior and functioning in her care. In Ms. Burns' opinion there should be a significant reason to disrupt a well functioning status quo.

THE CHILD'S CIRCUMSTANCES

[14] While C.G. was still residing in Pictou County, J.J.D. was having problems in school. He was reported to be bullied, was unfocussed in class and experiencing inter-personal problems. C.G. relocated to another school district in Pictou County. These school issues finally appeared to have resolved themselves with the move to Digby where he is reported to be performing above grade average and not perceived by his teachers as presenting a behavioral problem in the school. By the summer of 2009 however, C.G. was becoming concerned about J.J.D.'s other behaviors, particularly behaviors she noted around access visits. She has reported to her counselor behaviors such as ripping his clothing, playing with matches, knives and possibly contaminating food. There was concern within C.G.'s home that these behaviors may be presenting a risk to both J.J.D. and other members of the household. C.G. sought advice from the local mental health clinic. She was advised by them that while the issue of primary care was still being litigated, the therapist did not recommend to C.G. that J.J.D. start therapy. C. G. was advised that a stable placement was a prerequisite to therapy. The therapist did recommend that J.J.D. have a developmental assessment to see if that might identify any other reasons for his behavior. Psychologist Cornelia Melville conducted an assessment in March of 2010. While she did not find any great underlying reason for the behavior, she concluded that his language skill was a

source of frustration and he does not deal well with stress. In her report she noted:

> Trust and feeling comfortable also seemed to be an important factor for J.J.D.'s overall performance. J.J.D.'s academic performance and adaptive abilities will continue to be contingent on his social and emotional development and, as such, structure, consistency and predictability, both at home and at school, will be essential factors for him. J.J.D. presented as a young boy who perhaps has limited resiliency (ability to deal with challenges and pressures) and buffers for stress. This limited emotional resiliency is often characterized by a failure to respond to social and environmental interactions in a developmentally appropriate manner and may become a barrier to his ongoing adaptive development. Therefore, to enhance J.J.D.'s hardiness, he will continue to benefit from supports that reinforce schedules and routines, learning how to make appropriate choices, visual supports, environmental challenges with preparation and planning that he understands and positive reinforcements and self-regulation and calming strategies. From the minimal interaction I had with J.J.D., he tends to be more self contained and has a limited social network. Encouraging him to participate in a larger social environment and engage in activities that take him away from the computer would be very beneficial for him.

[15] As noted above, C.G. sought advice from the local Mental Health Clinic regarding J.J.D.'s behaviors. In the opinion of mental health therapist Janet Greenough who C.G. has met with a number of times over the past months, the most important thing in managing J.J.D.'s behavior is a predictable and nurturing environment. In Ms. Greenough's opinion the behaviors reported to her by C.G. including J.J.D.'s regular tantrums are highly suggestive of post-traumatic stress and attachment issues.

[16] Meredith Burns' parental capacity report reviewed much of the documented history between the parties. C.G. was highly critical of P.D.'s

parenting and drug use from the time of J.J.D.'s birth. C.G. reported her concerns to the Agency. C.G. also had contact with J.J.D. as an infant. The circumstances whereby J.J.D. came to be in C.G.'s care (he was removed from P.D.'s sister's home) were never accepted by P.D. Meredith Burns concluded that many of P.D.'s allegations regarding C.G. were not supported by the evidence she found. What is clear from the file history is that J.J.D. had many caregivers and numerous foster homes (seven) during his early (five) years. When J.J.D. and his older brother came to live with C.G. in 2006 they were described as having very poorly developed social skills. The boys had no sense of boundaries and were difficult to discipline. They had no set bedtimes and did not seem accustomed to other normal daily routines or structures. It is Ms. Burn's opinion that it is essential to look at J.J.D.'s history to determine what is in his best interest today. At page 41 of her report she writes:

> Given what we know about the importance of the availability and the sensitivity of the primary care taker(s) with respect to attachment, what we know of addictions and what we know of P.D. and J.G.'s life, it is highly probable that the boys' attachment to their parents was insecure or disorganized. Further, P.D.' s descriptions of her family of origin suggest that new attachments formed while in that family may also have been disorganized or insecure.

In her opinion, at page 41:

> . . . what J.J.D. needs at this time is related to where he has been and who has been with him.

And at page 42:

> J.J.D. has been with C.G. from that time forward. She has shown herself to be a committed parent to him. His adjustment level has improved considerably from descriptions of him prior to experiencing the consistency of her parenting. As such, the primary question is not whether P.D. is capable of parenting. I believe she is committed to remaining drug free and what I observed of her and R. with respect to their care of A. was very good.
>
> The question involves what are the implications of removing a boy with J.J.D.'s history of attachment disruptions from a caretaker who has consistently been there for him over three (four) years.

[17] One of P.D.'s major concerns about C.G's care of J.J.D. is the number of moves C.G. has made while J.J.D. has been in her care. While many of P.D.'s allegations against C.G. are not supported by evidence, there certainly is evidence of a number of moves. The parental capacity assessor acknowledges that frequent moves are not likely in J.J.D.'s best interest. However, the assessor notes that these moves, while numerous, have been planned and for the most part, justified in terms of events in C.G.'s life. The moves have been necessitated by employment, caring for an ailing parent and medical care. While the moves have certainly been more than ideal, the assessor points out that the consistency of caregiver and family routine is more important. In fact, the assessor goes so far as to suggest that for a child with J.J.D.'s background to make the strides that he has made in C.G.'s care, considering the moves, is in fact reflective of the quality of parenting C.G. has provided.

[18] In doing her report, Ms. Burns compared the parenting styles of P.D. and C.G. C.G.'s household appears to be very organized with a lot of structure, boundaries and expectations. In her opinion this approach is better suited to a child like J.J.D., than the more relaxed environment provided by P.D. and her partner.

[19] As noted earlier, the relationship between C.G. and P.D. has always been strained. There appears to be little or no trust between them based on their shared history. The care of J.J.D. and his well being is something in which both women are highly invested. P.D.'s position is simply that she has put her life back together and can now offer J.J.D a good home. She believes they are entitled to a second chance. C.G.'s view of P.D. continues to be tainted by history. More importantly C.G. does not believe P.D. truly understands where J.J.D. is emotionally and how fragile he is while caught between those who are probably the two most important people in his life. C.G. believes that without truly understanding J.J.D.'s circumstances, P.D. will either intentionally or perhaps unintentionally, say or do things designed to encourage J.J.D. to reject C.G.'s role in his life.

[20] In Ms. Burns' opinion J.J.D. has a secure attachment with C.G. and

his best interests at this time are tied to maintaining and strengthening that bond.

[21] Meredith Burns summed up this difficult issue at page 44 of her report:

> From the first affidavit, P.D. has wanted care and custody of J.J.D. This is understandable. She loves J.J.D., her addiction issues are in sustained remission and she has a supportive and nurturing partner in R. and sees herself as now ready to parent J.J.D. In most regards this may well be the case. Her accomplishment of becoming and remaining drug free is impressive. She is on a good track. ***What is troubling is that her need to have J.J.D. home appears to take precedence over his needs***. Her affidavits do not indicate that she had sufficient awareness of the possible implications of moving J.J.D. from a home where he has many positive relationships. She also does not appear to see how he is caught between wanting to please both families. Her understanding of these dynamics is essential if she is to play a larger and larger role in J.J.D.'s life. P.D. will damage him emotionally if she proceeds in a manner that forces him to reject C.G. Even if there were major issues with C.G.'s parenting, and aside from the moves there does not appear to be, a loss of this relationship especially in a negative controversial way will have a significant negative impact on his adjustment level now and most likely into the future. (emphasis added)

[22] She also noted at page 43:

> The reality is however that J.J.D. and his mom are in the early stages of reestablishing a relationship. We have not seen yet how well P.D. is able to serve as his primary caretaker with respect to the various dimensions of parenting capacity. Her role as caretaker versus mother of J.J.D. has been limited. C.G. however has a record with J.J.D. and overall he appears to have done well in her care. This is not a child that should be moved without significant need and a carefully planned transition process.

CULTURAL ISSUES

[23] P.D. belongs to the Pictou Landing First Nations where she resides. J.J.D. was born there. Cultural issues are clearly a consideration in this case. C.G. has some First Nations connections, but is not a member of the First Nations nor

does she reside in a First Nation community. J.J.D. is clearly aware of his heritage. While C.G. acknowledges the need to support J.J.D. on this issue, she is certainly not in the same position as P.D.

[24] P.D. has commenced counseling with Dr. Jean Graveline who is a registered social worker who also holds a doctoral level degree in aboriginal philosophy. She has extensive experience in working with First Nations people, including experience with transitioning youths between cultures. She is only beginning to work with P.D. and has never met J.J.D. In her experience native youth placed outside their community often express a strong compulsion to return as they get older. In her opinion it is important for young people in these circumstances to be able to maintain contact with their birth parents and be supported appropriately should they wish to transition to their native community. Dr. Graveline is prepared to work with P.D. and to provide supervised access for J.J.D. at the community health centre. In Dr. Graveline's opinion, if the appropriate level of contact between J.J.D. and his birth mother is not maintained, J.J.D. will be at risk and could suffer anger, abandonment or loss issues as well as increased risk of self harm.

LAW

[25] In deciding custody/access issues, the court is given direction under the *Maintenance and Custody Act* at section 18(5):

> In any proceeding under this Act concerning care and custody or access and visiting privileges in relation to a child, the court shall apply the principle that the welfare of the child is the paramount consideration.

[26] Perhaps the seminal statement of what is involved in best interest was delivered by the Supreme Court of Canada in *King v. Low* [1985] 1 S.C.R. 87 at par. 27:

> I would therefore hold that in the case at bar the dominant consideration to which all other considerations must remain subordinate must be the welfare of the child. This is not to say that the question of custody will be determined by weighing the economic circumstances of the contending parties. The matter will not be determined solely on the basis of the physical comfort and material advantages that may be available in the home of one contender or the other. The welfare of the child must be decided on a consideration of these and all other relevant factors, including the general psychological, spiritual and emotional welfare of the child. It must be the aim of the Court, when resolving disputes between rival claimants for the custody of a child, to choose the course which will best provide for the healthy growth, development and education of the child so that he will be equipped to face the problems of life as a mature adult. Parental claims must not be lightly set aside, and they are entitled to serious consideration in reaching any conclusion. Where it is clear that the welfare of the child requires it, however, they must be set aside.

[27] The evidentiary factors the court might consider in determining the best interests or welfare of the child have been addressed in many cases including *Foley v. Foley* (1993) 124 N.S.R. (2d) 198 (N.S.S.C.)beginning in paragraph 15:

> . . . In determining the best interests and welfare of a child the court must consider all the relevant factors. The diversity that flows from human nature is such that any attempt to compile an exhaustive list of factors that could be relevant is virtually impossible.
>
> **16** Nevertheless, there has emerged a number of areas of parenting that bear consideration in most cases including in no particular order the following:
>
> a. 1.

Statutory direction Divorce Act 16(8) and 16(9), 17(5) and 17(6);

b. 2.

Physical environment:

c. 3.

Discipline;

d. 4.

Role model;

e. 5.

Wishes of the children - if, at the time of the hearing such are ascertainable and, to the extent they are ascertainable, such wishes are but one factor which may carry a great deal of weight in some cases and little, if any, in others. The weight to be attached is to be determined in the context of answering the question with whom would the best interests and welfare of the child be most likely achieved. That question requires the weighing of all the relevant factors and an analysis of the circumstances in which there may have been some indication or, expression by the child of a preference;

f. 6.

Religious and spiritual guidance;

g. 7.

Assistance of experts, such as social workers, psychologists-psychiatrists- etcetera;

h. 8.

Time availability of a parent for a child;

i. 9.

The cultural development of a child:

j. 10.

The physical and character development of the child by such things as participation in sports:

k. 11.

The emotional support to assist in a child developing self esteem and confidence;

l. 12.

The financial contribution to the welfare of a child.

m. 13.

> The support of an extended family, uncles, aunts, grandparents, etcetera;
>
> n. 14.
>
> The willingness of a parent to facilitate contact with the other parent. This is a recognition of the child's entitlement to access to parents and each parent's obligation to promote and encourage access to the other parent. The Divorce Act s. 16(10) and s. 17(9);
>
> o. 15.
>
> The interim and long range plan for the welfare of the children.
>
> p. 16.
>
> The financial consequences of custody. Frequently the financial reality is the child must remain in the home or, perhaps alternate accommodations provided by a member of the extended family. Any other alternative requiring two residence expenses will often adversely and severely impact on the ability to adequately meet the child's reasonable needs; and
>
> q. 17.
>
> Any other relevant factors.
>
> **17** The duty of the court in any custody application is to consider all of the relevant factors so as to answer the question.
>
> With whom would the best interest and welfare of the child be most likely achieved?
>
> **18** The weight to be attached to any particular factor would vary from case to case as each factor must be considered in relation to all the other factors that are relevant in a particular case.

[28] In *Young v. Young* [1993] 4 S.C.R. 3, the Supreme Court of Canada dealt at length with the best interest of a child in relation to custody and access disputes. At paragraph 210 McLachlin J. (as she then was) says about access:

> **210** I conclude that the ultimate criterion for determining limits on access to a child is the best interests of the child. The custodial parent has no "right" to limit access. The judge must consider all factors relevant to determining what is in the child's best interests; a factor which must be considered in all cases is Parliament's

> view that contact with each parent is to be maximized to the extent that this is compatible with the best interests of the child. The risk of harm to the child, while not the ultimate legal test, may also be a factor to be considered. This is particularly so where the issue is the quality of access -- what the access parent may say or do with the child. In such cases, it will generally be relevant to consider whether the conduct in question poses a risk of harm to the child which outweighs the benefits of a free and open relationship which permits the child to know the access parent as he or she is. It goes without saying that, as for any other legal test, the judge, in determining what is in the best interests of the child, must act not on his or her personal views, but on the evidence.

[29] In *Van de Perre v.* Edwards [2001] S.C.J. No. 60 the court considered race and culture as a factor in a custody dispute. At paragraph 38 of his judgement, Bastarache J. writes:

> . . . As I have said, racial identity is but one factor that may be considered in determining personal identity; the relevancy of this factor depends on the context. Other factors are more directly related to primary needs and must be considered in priority (see R. G. McRoy and C. C. Iijima Hall, "Transracial Adoptions: In Whose Best Interest?", in Maria P. P. Root, ed., The Multicultural Experience (1996), 63, at pp. 71-73). All factors must be considered pragmatically. Different situations and different philosophies require an individual analysis on the basis of reliable evidence.
>
> **39** There is also a distinction between the role of race in adoption cases and those cases involving two biological parents desiring custody; see G. Pollack, "The Role of Race in Child Custody Decisions Between Natural Parents Over Biracial Children" (1997), 23 N.Y.U. Rev. L. & Soc. Change 603, at p. 617. In adoption cases, the situation might arise whereby the court must make an either/or decision; in other words, the child is either granted or denied exposure to his or her own heritage. Here, however, we have two biological parents, each of whom shares a part of the race and culture of the child. Of these two biological parents, one will be granted custody and one will be granted access. The result here is that Elijah will have exposure to both sides of his racial and cultural heritage. There was no evidence introduced to suggest that greater exposure to one's racial background through custody as opposed to access is in the better interests of the child in every case.

CONCLUSIONS

[30] Despite the allegations and concerns expressed by both parties, the

court finds that both homes have a critical and important role to play in J.J.D.'s life. What J.J.D. requires is a decision on his primary care and then for those who profess their love for him to support an open relationship with both families. J.J.D.'s best interests require that J.J.D.'s "parents" both seek advice and place their trust in the professionals working with them. Anything less is a failure to put the needs of the child first and that is a prerequisite to exercising their parental roles.

[31] The circumstances of J.J.D.'s early life have affected his emotional development and the roles of his primary caregivers. The attachment aspect of parenting is time sensitive and extremely complex. P.D., not C.G., is responsible for the circumstances that removed J.J.D. from P.D. She must accept that responsibility and be prepared to adjust her role in J.J.D.'s life to what is now in his best interests. The evidence in this case is that the most important component of J.J.D.'s best interests at this time is to allow him to grow and strengthen the secure attachment he has with C.G. This however must be done while encouraging him to know and benefit from a relationship with his biological mother.

[32] The guiding principal in every custody decision is the best interest of the child. While P.D. may feel that she has earned a second chance to be J.J.D.'s primary care giver, her wishes are secondary to J.J.D.'s needs. The evidence is that J.J.D. has grown in the care of C.G. and she is currently the significant attachment figure in his life. The evidence supports the conclusion that her parenting style is currently best suited to J.J.D.'s needs and she appears to have the best understanding of his delicate emotional state. For these reasons primary care should be with C.G.

[33] This custody process has clearly stressed J.J.D. There is evidence before the court that he clearly feels caught in the middle between two people whom he loves but who distrust each other.

[34] There are risks associated with access. The court agrees with the recommendation of the assessor that until P.D. can demonstrate an understanding of J.J.D.'s needs, access should be supervised. The frequency of supervised access should be at least monthly provided P.D. is engaging in regular counseling with a therapist who has expertise in the areas of attachment therapy and the dynamics

involved when a child is placed in the middle. The schedule of access must also be supported by J.J.D.'s therapist. The court cautions that while P.D. is beginning a therapeutic relationship with Dr. Graveline, there is no evidence before the court that she is qualified to do attachment therapy. Acquiring the services of an appropriate therapist, if Dr. Graveline is not so qualified, should be P.D.'s initial priority. The court does note that both Dr. Graveline and J.J.D.'s therapist have indicated a willingness for joint sessions and these opportunities should be explored.

[35] C.G. must also support access in a more proactive way. Passive resistance is not in J.J.D.'s best interest. There is evidence that J.J.D. wants to spend time with his mother and he has indicated satisfaction with past access visits. Just as P.D. must support a different role in J.J.D.'s life, C.G. must also demonstrate more active support of access so that J.J.D. is given the opportunity and support to explore the role P.D. will play in his life. The ultimate goal each party will play in J.J.D.'s life depends on their willingness and ability to move forward in support of J.J.D.'s best interests.

[36] In accordance with the recommendations of Ms. Burns, access remains supervised on as frequent a basis as is supported by J.J.D.'s therapist. Once P.D. has demonstrated sufficient insight into the attachment issues, access should return to unsupervised overnight access for a six month trial basis.

[37] The order will contain a reasonable access provision, subject to review, consistent with the recommended services.