

**FAMILY COURT OF NOVA SCOTIA**

**Citation:** *L.M.C. v. L.R.*, 2016 NSFC 38

**Date:** 20161103

**Docket:** FAMMCA-093876 and FAMMCA-094589

**Registry:** Amherst

**Between:**

**FAMMCA-0983876**

L.M.C.

Applicant

-and-

L.R., B.S., K.M.

Respondents

And

**Between:**

**FAMMCA-094589**

F.A. and W.A.

Applicants

-and-

L.R., B.S., K.M.

Respondents

**DECISION**

**Judge:** The Honourable Associate Chief Judge S. Raymond Morse

**Heard:** October 18 and 20, 2016 in Amherst, Nova Scotia

**Oral Decision:** November 3, 2016

**Counsel:** Wanda Severns, for the Applicant, L.M.C.  
Robert Moores, for the Applicants, F.A. and W.A.  
Meghan Brown, for the Respondent, L.R.  
Kendrick Douglas, for the Respondent, K.M.

**By the Court:**

**INTRODUCTION**

[1] This proceeding involves the application between L.C. and L.R., B.S., and K.M. and the application between F.A. and W.A. and L.R., B.S., and K.M. The applications proceeded as a consolidated proceeding and when we concluded last day I reserved decision and indicated to counsel and the parties that I would provide an oral decision this morning.

[2] By way of introduction, the Applicant, L.C., is the paternal grandmother of I.S., date of birth February \*, 2007. L.C.'s application confirms her request for custody of I.S. The Respondent, L.R., is the mother of the child, and the Respondent, B.S., is the father of the child. K.M. is the child's maternal step-grandmother and is the common law partner of the child's maternal grandfather, F.R. F.A. and W.A. are the child's paternal great-aunt and uncle, paternal great-aunt by marriage, I think, is how W.A. put it at the time.

[3] In her response to L.C.'s application, K.M. requested an Order under the **Maintenance and Custody Act** confirming that the child would remain in the care and custody of herself and F.R. She and F.R. also have five biological children, who reside with them in addition to another grandchild, \*, who would be the youngest son of L.R.

[4] By their separate application F.A. and W. A. also requested an Order for custody of I.S.

[5] I.S. is currently nine years old. She is a member of the K.M.-F.R. household. She presently attends elementary school and started Grade 4 in September of this year.

**SUMMARY OF THE PROCEEDINGS**

[6] I.S. was the subject of a child protection proceeding commenced in the fall of 2014 pursuant to Protection Application and Notice of Hearing dated December 12, 2014. During the course of that proceeding the Court approved placement of I.S. with K.M. and F.R. under the auspices of a Third-Party Supervisory Order.

[7] Pursuant to Notice of Application dated November 10, 2014, L.C. requested leave to apply for custody of the child, I.S. A handwritten affidavit was filed in support of the application.

[8] At the time of the initial docket appearance in relation to L.C.'s application on January 21, 2015, the Court directed that L.C.'s application be held in abeyance and not be dealt with until after the protection proceeding had been concluded.

[9] Pursuant to Notice of Application dated January 20, 2015, F.A. and W.A. made application for leave to apply for an Order for custody under the **Maintenance and Custody Act**. The Court also directed that this application be held in abeyance pending the outcome of the protection proceeding.

[10] On July 8, 2015, K.M. filed a response application to L.C.'s application, as well as a parenting statement. In her parenting statement, she confirmed her request that the child, I.S., continue to reside with herself and F.R. and that they have custody. On July 8, K.M. also filed a response application to the application as filed on behalf of F.A. and W.A.

[11] The Minister requested a Termination Order in the protection proceeding on October 16, 2015, on the condition that an appropriate **Maintenance and Custody Act** Order be confirmed. All parties confirmed their willingness to consent to an Interim Order that would maintain the status quo and allow the child, I.S., to continue in the day-to-day care of K.M. and F.R. At time of the October 16 hearing the Court also confirmed a Consolidation Order so that all matters at issue in the two **Maintenance and Custody Act** applications could be heard and determined by way of a consolidated proceeding. Unfortunately, I would note that an appropriate Order was never submitted in accordance with the outcome of the October 16 hearing.

[12] At time of a docket review hearing on October 28, 2015, the parties confirmed their willingness to participate in a settlement conference. It was agreed that the existing **Maintenance and Custody Act** Order in favour of K.M. would remain in force and effect. However, the Court also assigned dates for trial on February 9, 11, and 12, 2016.

[13] His Honour Judge Hubley presided at the February 2, 2016 settlement conference. The conference resulted in a further interim agreement between the parties, which saw the child continue in the care of K.M. and F.R. The parties also agreed to participate in a further settlement conference in May or June in order to evaluate how things were progressing and to determine whether or not a final settlement agreement was possible. The parties also agreed to request that the dates for trial previously assigned be vacated given the outcome of the settlement

conference. The matter was then scheduled for further settlement conference on June 14, 2016.

[14] At time of a docket review on May 11, 2016, the Court assigned new dates for trial such that the trial was scheduled to commence October 18 and continue on October 20, 21, and November 3. A pre-hearing was scheduled for September 6 and filing deadlines were assigned.

[15] The settlement conference of June 14 did not resolve the matter. L.C. confirmed that she wished to proceed with her application. The Court confirmed that the existing Interim Order would remain in force and effect pending the outcome of trial.

[16] A further pre-hearing was held September 6. At that point, the Court was advised that all of the parties, except L.C. and B.S., had been able to reach an agreement or understanding premised upon continued care and custody with K.M. and F.R. L.C. confirmed her intention to proceed with her application for custody. All parties agreed to dispense with the necessity of leave so that the applications could be dealt with on their merit without the necessity of seeking or determining leave.

## **ISSUE**

[17] The issue for determination is which parenting plan or proposal would be in the best interest of the child I.S. The major contest at this point is between L.C. and K.M. Both parties have put forward competing parenting plans or proposals. While W.A. is currently supporting K.M.'s parenting plan, in the alternative, should the Court not approve K.M.'s plan, W.A. takes the position that she would like herself and her husband considered as an alternate placement.

[18] The hearing commenced on Tuesday, October 18 and continued on October 20 and 21. Fourteen exhibits were entered during the course of the hearing. L.C. testified in support of her application. T.A. also testified on behalf of L.C. Exhibit 13, a letter from L.C.'s friend, M.S., was entered by agreement. B.S. testified on his own behalf and in support of his mother's application. K.M. testified on her own behalf. A letter from the child's family physician, Dr. Brian Ferguson, Exhibit 14, was entered by consent. W.A. testified on her own behalf and in support of K.M.'s parenting plan. L.R. testified on her behalf and in support of K.M.'s parenting plan.

[19] At the conclusion of the trial on October 21, I reserved decision and confirmed my intention to provide an oral decision on today's date. The paragraphs that follow contain, or what I am going to continue to read, contain a summary of the evidence and, as such, is not comprehensive. However, I want to confirm that I have carefully considered all of the *viva voce* testimony, as well as all of the exhibits that were tendered during trial, for purposes of this decision.

[20] At the outset of her testimony L.C. was asked to explain her application, and she responded by indicating that she wanted to have the opportunity to provide the best placement for her granddaughter, I.S., with the best opportunity to grow up, and to provide the best of care for her throughout her life. She identified Exhibit 1, her affidavit sworn September 12, 2016. She also identified Exhibit A to her affidavit as her original affidavit sworn July 28, 2015.

[21] L.C. confirmed that she currently resides in New Brunswick, close to Port Elgin. She noted that I.S. had spent all of her life in the Province of New Brunswick until 2014 when her mother, L.R., and I.S., went to stay with K.M. and F.R. near Amherst, Nova Scotia.

[22] L.C. testified to the difficulties that she encountered in learning where her granddaughter was after she heard rumours that Child Protection Services had become involved. She did not ask her son, B.S., where the child was because they were not speaking to each other at the time. She was eventually informed that the child was at K.M.'s and advised that she could contact K.M. to discuss visits. She did contact K.M. and saw I.S. that same day at K.M.'s home.

[23] L.C. talked about the difficulties that she encountered in trying to arrange for regular access contact with I.S. She had difficulty making contact with K.M. Initially, there was some friction between L.C. and K.M.

[24] L.C. testified that because I.S. has visited with her at her home, people in the community know her and ask how she is doing. She indicates that her friends know I.S. and that there are members of her extended family who live close by, including her brother and various cousins.

[25] L.C. raised a number of concerns relating to K.M.'s care of I.S. She expressed concern that on a couple of occasions that the K.M.-F.R. home was without power and, therefore, there would have been no hot water. She also expressed concern that when I.S. would visit she observed the child's fingernails to be full of dirt, as well as her toenails and feet. It was her impression that the child

had not been bathed for a period of time. She acknowledged that this happened in the summer. On another occasion when the child was visiting she felt that the child's feet had an odour that again indicated to her that she had not bathed for several days.

[26] In her affidavit, L.C. expressed concern about the child's feet and toenails, describing the toenails as being turned-down and attributing this to the child's shoes being too small. Photographs of the child's face, hands, and feet were attached as Exhibit C to her affidavit. Other concerns identified and referred to by L.C. related to the child's nutrition and her belief that the child often goes hungry. In her original affidavit sworn July 28, 2015, she expressed concern about the child's breath and her dietary needs.

[27] At one point during her direct examination L.C. indicated that at present she basically gets an overnight visit with I.S. but that she would like to have I.S. from Friday to Sunday. She also expressed concern that at different times the child has had sores that she didn't believe had been properly treated. She expressed concern that the child's clothes were three sizes too big, and on one occasion when she picked the child up her top was ripped and her leggings were stained. She indicated she didn't feel the child was properly dressed for the visit and it was more like she was wearing play-clothes.

[28] L.C. acknowledged that her relationship with the child's mother, L.R. was up and down. When asked about her observation of her son, B.S., and his interaction with the child she suggested that he could be firm in dealing with I.S. and that she had never seen anything really bad but then mentioned that she had observed some bruising on the child's back on one occasion and that the child had indicated to her that the bruising was from her father.

[29] When asked about K.M.'s home L.C. suggested that it was cluttered. However, she also indicated that she had stopped going into the home because K.M. had indicated that she felt L.C. was upsetting the children. She also testified that she did observe K.M. on one occasion where she went into a rant regarding mittens. She indicated that that was concerning to her. She suggested that her way of handling children is different than that of K.M.'s and that she does not believe in lectures or ranting. When asked about her relationship with her son, B.S., she said that everything is fine now and that she believes everything is good with him.

[30] L.C. confirms that she does not work full-time and works part-time from her home. Her life is pretty quiet. She has a support network consisting of her brother

and his common-law spouse, who live close by, and also has friends, such as M.S. in Amherst, who offer to assist her. She also indicated that I.S. has a best friend, H., who lives in Port Elgin. When asked why she was seeking custody, she indicated that she and I.S. have a close relationship and if she was able to care for her she would never want for anything. She also indicated that she believes that the child needs guidance and should be properly looked after with respect to cleanliness and hygiene.

[31] She believes that a child's nutrition needs need to be met to help them grow and do well in school. She talked about concerns she had that I.S. had been constipated due to lack of fiber in her diet. She expressed concern that the child's breath on one occasion smelled like feces, and again, she attributed this to a bowel issue.

[32] When asked about access if she had care and custody, she indicated she would do what is best for I.S. and expressed her belief that I.S. should know her family. She suggested that other family members could contact her if they wanted to see I.S. as long as they were nice to I.S. and not upsetting her. She suggested that on occasion the child has been upset when she has returned I.S. to K.M.'s.

[33] During cross-examination by Mr. Douglas, L.C. described an incident where she had heard the sound of a slap when the child was with her son, B.S. Subsequently, she observed bruises on the child's back. She did not call Child Welfare immediately, and when asked why it took her so long to contact Child Welfare she indicated it was due to chemotherapy treatment, as well as her feeling that it might have been a one-time thing.

[34] L.C. acknowledged that her normal or usual access visit with I.S. is a Saturday overnight visit. She was referred to her original affidavit and the statement in her affidavit that she doesn't see that I.S. was thriving at K.M.'s and asked to explain the basis for that statement. In her response, she suggested that she was concerned that I.S. was not eating properly and that at one point she appeared to have lost weight.

[35] Later in her cross-examination she was referred to Exhibit 4, I.S.'s Grade 3 report card, and indicated that she was not surprised at the child's positive performance. She agreed that there was more than one parenting style.

[36] During cross-examination by Mr. Moores she was referred to paragraph 12 of her affidavit and it was suggested to her that her indication that she knew the

child better than anyone was an exaggeration. When asked if she knew the child better than even her mother or father she testified that she knows the child as well as they do and sometimes better than them. When asked about the incident where the child's breath smelled like feces and the fact that she thought it was due to constipation ... she acknowledged that she didn't take the child to Emergency or to a doctor and admitted that she should have.

[37] L.C.'s niece, T.A. testified on behalf of L.C. She confirmed that L.C. is her aunt. She has known L.C. her whole life. She referred to her as a loving and caring person. On October 17, 2016 she went with L.C. to pick up I.S. at K.M.'s home and indicated that she was appalled by the exterior of the home. It looked rundown. The lawn wasn't mowed. She referred to a lot of garbage or junk outside the residence, including a washer or dryer. On cross-examination T.A. confirmed that she had never been at the residence until October 17. On cross-examination she also acknowledged that the only other time she'd ever seen L.C. and I.S. together was when her grandmother passed away about four years ago.

[38] Exhibit 13 was admitted by consent. In her letter dated November 9, 2015, M.S. confirms that she has known L.C. for over 30 years. She's had the opportunity to observe L.C. with I.S. and has observed the relationship to be a loving and affectionate and respectful one. She expressed her belief that I.S. is a priority in L.C.'s life and that L.C. would provide a stable, loving home for her.

[39] The child's father, B.S. testified. He confirmed that he is presently working in Fort McMurray for a hydraulic company. He has had this employment for approximately two years. His employer has zero tolerance for drugs. He expressed his hope to maintain his current job and move up the ladder becoming an installer and possibly a supervisor. He talked about how his life had changed dramatically in the last couple of years and how he has stopped his drug use and learned to cope with his diagnosis of schizophrenia. He confirmed that in his younger years he used cocaine and crack, as well as marijuana. He has slowly weaned himself off drugs and is currently involved in a common-law relationship.

[40] In talking about his upbringing he indicated that his mother was firm but never hit him. Again, he indicated he never experienced any abuse from his mother. However, he also acknowledged that he and his mother never saw eye to eye. B.S. denied seeing any paperwork or document saying that he could not see his daughter after the Child Protection proceeding was commenced. He referred to the relationship between I.S. and his mother as always being positive and indicated that his mother would do anything for the child.



[41] At another point during his testimony he indicated that at K.M.'s there are too many children and he felt that it would be better if I.S. had one-on-one attention. He indicated his mother would be available to provide that. He suggested that his mother's home was always well looked after, whereas K.M.'s is always cluttered. He expressed his belief that there is no way I.S. would get the attention that she requires at K.M.'s because there are too many children.

[42] On another point in his evidence B.S. expressed his desire to see his daughter as often as he could. Again, he reiterated his belief that the best place for I.S. is with his mother in order to receive the care and one-on-one attention that he feels she needs.

[43] During cross-examination he was referred to Exhibit 7, the affidavit of W.A., and he indicated that the information as set forth in paragraphs 28 and 29 of the affidavit was not true. When questioned about his non-participation in the protection proceeding he testified that he was emotionally distraught and needed to separate himself from the situation. He didn't want I.S. to see him break down, so he decided not to be involved.

[44] During cross-examination he stated that he has never seen I.S. being treated differently but nevertheless believes that she would do better with more one-on-one contact. He also acknowledged and agreed that I.S. always appears happy-go-lucky and not malnourished. While acknowledging that he had participated in supervised visits at the Agency in Amherst after the protection proceeding was commenced, he maintained that he had never received any paperwork and had no idea why the visits had to be supervised. He again denied that he had ever received any documentation relating to the protection proceeding and then commented that, given his record, he didn't think it would be much of a fight. At another point during his cross-examination when discussing I.S.'s positive school performance B.S. suggested that he didn't feel that it was K.M. who would be helping with the child's homework.

[45] When asked how much money he had contributed to support his daughter he responded he has done nothing. He then stated that he would not provide assistance for K.M., even if she was to have custody. On re-direct he explains his answer by indicating that he wouldn't pay child support to K.M. based on his concern about where the money would go and that he would not want to see the other children benefitting from any support he paid for I.S.

[46] In response to questions from the Court, B.S. confirmed that he appeared in court in Amherst during the course of the Child Protection proceeding and advised the Court that he did not want to participate in the Child Protection proceeding.

[47] K.M. testified on her own behalf. She resides near Amherst, Cumberland County, Nova Scotia. She and F.R. have been involved in a common-law relationship for 20 years. They have five children, with the oldest child, C., being 19 and the youngest, S., age seven. She is also looking after F.R.'s grandson, B., and also I.S. K.M. described the home as a big old farmhouse with four bedrooms upstairs and one bedroom downstairs. The children share a bedroom except for B. I.S. shares a bedroom with S. and she indicated that they were the best of friends.

[48] When asked about the cleanliness of the home she acknowledged that it was cluttered and then proceeded to provide a description of various rooms. When asked about cleaning of the home she indicated the kitchen area is swept every day and usually mopped every second day. Their washer usually doesn't stop and she has gone through several washers and dryers. She acknowledged that there was a washer outside and stated that her plan is to have it repaired and to use that as a backup.

[49] She testified that she is seasonally employed at a local farm. The hours are flexible. Usually, she works in February till the end of June and is paid \$14 an hour. She indicated that she would describe herself and F.R. as financially healthy. F.R. is a truck driver but also sells firewood, works in the woods, and has odd contract jobs. F.R. is usually on the road three to four days each week. He owns an 18-wheeler. She confirmed that they have 14 horses and somewhere in the range of 70 to 80 head of sheep and a dozen cattle. They have 240± acres on one side of the road and a 180 acres on the other side. The children play outside frequently. She acknowledged that there is a lot of grass and stated that it was usually mowed but that the ride-on mower had broken down and had not been repaired.

[50] When asked about the hygiene routine for the children she indicated the children get a bath every second night. She suggested that dirt under the children's fingernails would be from playing outside. Bedding is washed once per week on alternate days. She explained that the children have chores according to their age. I.S.'s chores include folding clothes and putting them away and putting her shoes and boots away.

[51] K.M. spent some time explaining the history behind I.S. coming to live with her family. She testified about receiving a call from the child's mother, L.R., in September 2014, reporting that there had been some sort of an incident or domestic dispute and that she wanted out of the relationship with B.S. She and F.R. went and picked up L.R. and I.S. They contacted both the RCMP and Child Protection in Moncton before leaving New Brunswick, and when they arrived in Nova Scotia they stopped in at the RCMP. She was eventually contacted by a local Child Protection worker, Michelle Morris, who asked if she would be responsible for L.R. and I.S. The worker instructed her that L.R. was not to return to B.S. with I.S. and B.S. was not to be allowed on their property.

[52] They began to fix up a mobile home for L.R. and I.S. One night L.R. spent the night at the mobile home and next morning advised K.M. that her friend was going to take L.R. and I.S. for a drive. When she observed this individual K.M. recognized the individual to be B.S. and she attempted to take I.S. back home but B.S. grabbed the child and gave K.M. a shove. They left the property and she called 9-1-1. She also contacted Child Protection. The child was subsequently placed with K.M. and F.R. under the terms of a Third-Party Supervisory Order.

[53] K.M. testified that I.S. gets along with her brothers and sisters. She refers to herself and F.R. as Mom and Dad. K.M. is the disciplinarian and advised that disputes between I.S. and the children are not frequent because she does not allow it. Punishments for the children include going to bed early or being sent to their room. If she is really angry with the children she indicated she makes them match odd socks. There is no difference in the discipline utilized between her biological children and the non-biological children. She denied talking down to the children but admitted that when discipline is required she does talk more sternly.

[54] She confirmed that I.S. is attending elementary school in Grade 4. She's getting straight As. When referring to the child's report card, Exhibit 4, and the comment that "I.S. always has a very contagious positive attitude, comes to school with a smile on her face, and is always willing to help others", she indicated that the child has the same demeanour at home.

[55] K.M. said that she sometimes helps I.S. with her homework but also explained that they have arranged for a tutor for the younger children after school. When asked about the responsibility of caring for so many children she indicated that she does not find it overwhelming and that, on occasion, she laughs about it and calls it "air traffic control".

[56] K.M. maintains that I.S. is thriving in her home and referred to the home as a big old house of love. I.S. is one of the children and she does not differentiate between her biological children and the non-biological children.

[57] She testified that I.S.'s family doctor is Dr. Ferguson. He's been her doctor since birth. She's been to see him several times and she took I.S. to him to discuss the possible bowel issue concern as raised by L.C. Dr. Ferguson indicated that there is no bowel issue and that I.S. is perfectly good.

[58] She then went on to testify that they eat what she refers to as farm meals and indicated that I.S. has a good appetite and likes chicken, ham, potatoes, and raw carrots. She also enjoys salads and loves tomatoes. She indicated that I.S. was growing and gaining weight.

[59] She testified that her husband, F.R., has a good relationship with I.S. She identified Exhibit 11 as the calendar record that she has kept showing the access contact between I.S. and her mother, her grandmother, L.C., and her aunt, W.A. She confirmed that the visits from L.C. were not court-ordered. She explained that she wanted to make sure that I.S. was comfortable with the visits and that the more she got to know L.C., she then decided that it would be appropriate to extend the visits. She pointed out that L.C. has had more visits than anyone else. L.C.'s visits are usually every second weekend. She did acknowledge that there was some difficulty in the communications between herself and L.C.

[60] K.M. confirmed that she believes that I.S. should have contact with L.C. because family is family. She believes that children should see and communicate with their family members. She referred to L.C. as a good person. She indicated that she believes that both L.C. and her son, B.S., should continue to see I.S. She is willing to work with L.C. and open to continued phone contact for B.S. She also indicated that I.S. looks forward to visits with her grandmother, as well as W.A.

[61] During cross-examination K.M. explained that B.'s brother, J., is no longer in her care because I.S. had made an allegation that he had touched her. She had contacted Child Protection. J. was charged and, according to K.M., subsequently found innocent. She acknowledged that she did not tell L.C. about the allegation. She indicated that she didn't want the allegation to be out there or in the community until the court finding had been made. She had concerns for both I.S. and J. She didn't want I.S. to be questioned at school.

[62] When cross-examined about her employment K.M. indicated that she may not go back to the mink farm in February 2017, indicating that she's getting older and F.R. now has a better job with more income.

[63] She testified that Child Protection told her that B.S. was not to have contact with I.S. K.M. denied having any concerns that I.S. felt lost in her household. During cross-examination by Mr. Moores she was referred to Exhibit 7 and confirmed, in relation to paragraph 18, that the children do not work in the woods. She also advised Mr. Moores that the discussions between herself and W.A. relating to access are not confrontational and she has no difficulty with W.A. continuing to have access with I.S.

[64] In responding to questions from Ms. Brown, she confirmed that she and L.R. were currently working well together and able to reach an understanding or agreement with respect to L.R.'s supervised access. On re-direct, K.M. testified that her work schedule does not interfere with her ability to meet the needs of the children and the children are her priority.

[65] Exhibit 14, the letter from Dr. Ferguson, was admitted by consent. The letter dated October 20, 2016, confirms that I.S. enjoys healthy physical and psychological well-being and since the beginning of her stay with K.M. and F.R., has presented as very happy.

[66] W.A. testified on her own behalf. She is I.S.'s great-aunt by marriage. She was asked why she had changed her position regarding K.M.'s care of I.S. and stated that her change of position resulted from a conversation she had had with I.S. herself and that she wanted to respect I.S.'s wishes. She currently has contact with I.S. every second Sunday.

[67] During cross-examination W.A. confirmed that it was true that she had seen F.R. kick B. with steel-toed boots on, on one occasion. She also testified that she had seen the children working in the woods. This would be the older children, including B. and J. She also spoke of an incident where she saw K.M. pin a child to the wall. However, she also testified at a later point that she had never seen K.M. hit a child and that most discipline consisted of being put on the couch or time-out.

[68] W.A. also testified that she was a little bit upset about B.S.'s denial of any abuse at the hands of his mother, L.C., as referred to at paragraphs 28 and 29 of her affidavit. W.A. testified that she knew what she had heard.

[69] The child's mother, L.R., testified on her own behalf. She identified her affidavit, Exhibit 8. She testified about her relationship with L.C., indicating that at first she felt that L.C. didn't like her. She indicated that she always tried to be nice and respectful to L.C. but felt that whatever she did L.C. didn't seem to care for. At present, she and L.C. do not speak at all.

[70] When asked about her allegation of sexual abuse on the part of her father, F.R., she stated that the allegation was not true. She indicated that she had been a rebellious teenager and that her actions had destroyed their relationship. However, she now indicated that their relationship was a little bit better.

[71] She explained at one point that she had let I.S. call K.M. "Mom". According to L.R., I.S. had asked for permission to do this, and she told her daughter that it was fine if it was comfortable for her. L.R. was questioned about her change of position and why she was currently supporting K.M. and she testified that she had changed her position because she wants to respect herself and her daughter. She indicated that I.S. seems happy, well cared for, and loved in K.M.'s home.

[72] When asked about her access time with I.S. she indicated that it's been great. She confirmed that K.M. has allowed extra time and she appreciates the fact that she has done so. She has no concerns about K.M.'s care of I.S. She also indicated that she would be concerned if L.C.'s request for custody was granted because she feels that L.C. wouldn't let her see I.S. as often due to their rocky relationship. She indicated that she wants to continue to enjoy the access that she currently has and hopes that it eventually will be unsupervised.

[73] During cross-examination L.R. testified that she had never seen K.M. raise a hand to a child. She has heard her raise her voice to a child. At one point she indicated that the incident between K.M. and a visiting child, as referred to in W.A.'s affidavit, caused her a little concern but again noted that she'd never seen her stepmother raise her hand to a child.

[74] She confirmed that she has seen the children work in the woods, which would include her sons J. and B., as well as C. C. being K.M.'s child, of course. She indicated that all they did was pile wood on the back of a truck. She also had heard J. complaining about his back.

[75] She confirmed that she's witnessed verbal fighting between the children but referred to this as normal squabbles and she'd never witnessed any punching. At another point she was asked if she felt there was a bond between I.S. and L.C. and

she agreed that there was. When referred to L.C.'s affidavit, Exhibit 1, and the observations made by L.C. that I.S.'s toenails were turned down L.R. indicated that she felt this was something hereditary, because she has the same problem.

[76] When referred to paragraph 11 of L.C.'s affidavit she commented that I.S. is a child and plays in the dirt and she's a bit of a tomboy and she also plays in the mud on occasion. She pointed out that during the summer I.S. wears Crocs and flip-flops and she expressed her belief that I.S. is a healthy child.

## **REVIEW OF SUBMISSIONS**

[77] Mr. Douglas confirmed that the only issue for determination was which of the competing parenting plans or proposals would be the best plan for I.S. Mr. Douglas indicated that there really was no issue as to the applicable law, and touching upon the evidence, he submitted that the evidence of K.M. was more credible than that of L.C. or B.S. He emphasized that the evidence confirmed that I.S. was doing well in school and appeared to be happy and suggested that this indicates she is currently living in a positive environment. I also want to acknowledge that Mr. Douglas had submitted an appropriate pre-hearing brief prior to trial.

[78] Mr. Moores acknowledged that his client's affidavit, this would be W.A., reflected her original position on custody but noted that she now is simply requesting the opportunity to maintain reasonable access contact with I.S. Only if K.M.'s plan is rejected is she requesting the opportunity to provide day-to-day care. Mr. Moores submitted that it would be important for the Court to weigh and assess credibility. He maintained that I.S.'s current lifestyle is fairly typical or consistent with a rural Nova Scotia lifestyle. He emphasized the importance of the evidence indicating that I.S. is happy and doing well at school. He referred, as well, to the importance of I.S. having a home and the opportunity for a meaningful relationship with her family, including her siblings.

[79] Mr. Moores submitted that K.M. has done as much as she can to promote access and has attempted to juggle the requests for contact with I.S. as best she can. He submitted that there was simply nothing in the evidence that would justify removing the child from her current environment and that it would be in her best interest to remain where she is.

[80] Ms. Brown confirmed that her client was continuing to support K.M.'s parenting plan. She acknowledged that there had been past difficulties in the

relationship but that the current relationship between L.R. and K.M. is positive. Ms. Brown confirmed that, again, the evidence indicated that I.S. was happy and doing well in K.M.'s home. She confirmed that her client has no concerns for I.S.'s safety at present. She indicated that it would be in the child's best interest to remain in the K.M.-F.R. home and that she continue to have reasonable access, subject to reasonable notice and supervision, with her mother, L.R.

[81] B.S. made a very brief submission on his own behalf, emphasizing that he would like to have access with his daughter, I.S., and indicated his willingness to provide advanced notice of when he would be available for access. He also indicated that he would be in agreement with his mother undertaking the responsibility for supervision of his access.

[82] Ms. Severns emphasized that maintaining the status quo should not be a paramount factor or consideration in determining I.S.'s best interest. Ms. Severns acknowledged that it was clear from the evidence that I.S. is loved by all her family. She also acknowledged that she is an outgoing child who loves school. She has thrived in school and is a bright and engaging young girl.

[83] Ms. Severns maintained that her client's testimony was credible. She suggested that there were concerns regarding the K.M. household but at the same time acknowledged that the determination of best interest was not about cleanliness and that the Applicant was not asking the Court to look at a standard of perfection. She acknowledged that the determination would have to be made based upon the child's best interest.

[84] Ms. Severns also acknowledged that I.S. is a pleasing and malleable child and, therefore, what she is reported as saying cannot or ought not to be taken at face value. Ms. Severns did suggest that the evidence justified the conclusion the child is currently living in an incredibly busy household and acknowledged that K.M. is well intentioned and had welcomed I.S. into their home. While acknowledging that credibility is an issue, Ms. Severns also acknowledged that the evidence presented to the Court has been self-serving from all sides and all parties. She suggested that the Court should look at neutral evidence in trying to determine the matter. Ms. Severns argued that the evidence show that the K.M. household was an incredibly busy and chaotic household. She suggested that K.M. had downplayed concerns. I want to acknowledge that Ms. Severns also submitted a pre-hearing brief prior to trial.

## **LEGAL ANALYSIS**



[85] With respect to the law, the Court is mandated pursuant to s. 18 of the **Act** to give paramount consideration to the best interests of the child. The legislation also provides guidance to the Court with respect to determination of best interests in s. 18(6). I am not going to review each of the provisions in s. 18(6) but they are referred to in my notes that I am presently referring to in providing an oral decision today.

[86] In *Burgoyne v. Kenny*, a decision of the Court of Appeal 2009 NSCA 34 of Nova Scotia Court of Appeal, Justice Bateman of the Nova Scotia Court of Appeal indicated as follows and this is in the context of discussing the oft-referred to decision of Justice Goodfellow in *Foley*. And this is what Justice Bateman said about the factors or listing of factors that Justice Goodfellow had referred to in *Foley*:

[25] The list does not purport to be exhaustive nor will all factors be relevant in every case. Each case must be decided on the evidence presented. Nor is determining a child's best interests simply a matter of scoring each parent on a generic list of factors. As Abella J.A., as she then was, astutely observed in **MacGyver v. Richards** (decision of the Ontario Court of Appeal):

27 Clearly, there is an inherent indeterminacy and elasticity to the "best interests" tests which makes it more useful as legal aspiration than as legal analysis. It can be no more than an informed opinion made at a moment in the life of a child about what seems likely to prove to be in that child's best interests. Deciding what is in a child's best interests means deciding what, objectively, appears most likely in the circumstances to be conducive to the kind of environment in which a particular child has the best opportunity for receiving the needed care and attention. Because there are stages to childhood, what is in a child's best interests may vary from child to child, from year to year, and possibly from month to month. This unavoidable fluidity makes it important to attempt to minimize the prospects for stress and instability.

29 Deciding what is best for a child is uniquely delicate. The judge in a custody case is called upon to prognosticate about a

child's future, and to speculate about which parenting proposal will turn out to be best for a child. Judges are left to do their best with the evidence, on the understanding that deciding what is best for a child is a judgment the accuracy of which may be unknowable until later events prove -- or disprove -- its wisdom.

## **WITH RESPECT TO ASSESSMENT OF CREDIBILITY**

[87] In *Baker-Warren v. Denault* 2009 NSSC 59 Justice Forgeron of the Nova Scotia Supreme Court offered the following comments with respect to assessment of credibility:

[15] The court must assess the impact of inconsistencies on questions of credibility and reliability which relate to the core issues. It is not necessary for a judge to deal with every inconsistency, but rather a judge must address in a general way the arguments advanced by the parties.

[88] "In considering the arguments advanced by the parties" ... this is going on to continue the quote from Justice Forgeron in **Baker-Warren v. Denault**:

[16] In considering the arguments advanced by the parties, I have applied the civil burden of proof. I have reviewed the totality of the evidence with reference to the internal consistencies and inconsistencies, and in reference to the position of each of the parties. In determining whether either party has met the civil burden of proof, I have looked for clear, convincing, and cogent evidence. I have made specific credibility findings based upon the evidence and in light of the civil burden of proof. Each party bears the burden in respect of the arguments which he/she advanced.

[18] For the benefit of the parties, I will review some of the factors which I have considered when making credibility determinations. It is important to note, however, that credibility assessment is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and

listening to witnesses and attempting to reconcile the various versions of events." I further note that "assessing credibility is a difficult and delicate matter that does not always lend itself to precise and complete verbalization."

[19] With these caveats in mind, the following are some of the factors which were balanced when the court assessed credibility:

- 1) What were the inconsistencies and weaknesses in the witness' evidence, which include internal inconsistencies, prior inconsistent statements, inconsistencies between the witness' testimony, and the documentary evidence, and the testimony of other witnesses;
- 2) Did the witness have an interest in the outcome or was he/she personally connected to either party;
- 3) Did the witness have a motive to deceive;
- 4) Did the witness have the ability to observe the factual matters about which he/she testified;
- 5) Did the witness have a sufficient power of recollection to provide the court with an accurate account;
- 6) Is the testimony in harmony with the preponderance of probabilities which a practical and informed person would find reasonable given the particular place and conditions;
- 7) Was there an internal consistency and logical flow to the evidence;
- 8) Was the evidence provided in a candid and straight forward manner, or was the witness evasive, strategic, hesitant, or biased;
- 9) Where appropriate, was the witness capable of making an admission against interest, or was the witness self-serving?

[89] Then she goes on to conclude with the following:

[20] I have placed little weight on the demeanor of the witnesses because demeanor is often not a good indicator of credibility. In

addition, I have also adopted the following rule, succinctly paraphrased by Warner J. in **Re: Novak Estate**:

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.

## **DETERMINATION OF BEST INTERESTS**

[90] When undertaking a determination as to best interests I am to consider the circumstances as referred to in s. 18(6) of the **Maintenance and Custody Act** as may be applicable. In this particular case, I would confirm the following findings based upon consideration of the evidence.

[91] I.S.'s physical, emotional, social, and educational needs are similar to those of most nine-year-olds. Clearly, she requires appropriate parenting in order to ensure that her needs are consistently and adequately met. The evidence confirms that I.S.'s biological parents are certainly not in a position at this time to adequately meet her needs. The evidence supports and justifies the conclusion that both L.C. and K.M. have the capability to ensure I.S.'s needs are adequately met, including the need for stability and safety.

[92] K.M. is the child's current caregiver or guardian. The evidence supports and justifies the conclusion that K.M. is certainly willing to support the development and maintenance of I.S.'s relationship with her mother, L.R., subject to the condition that the contact between L.R. and I.S. must continue to be subject to supervision. Currently, K.M. appears willing at this point to permit contact between the child's father, B.S., and I.S., subject to reasonable notice and the need to continue to ensure any such contact is subject to appropriate supervision.

[93] K.M. is also open to continued contact between I.S. and her paternal grandmother, L.C. She is also open to contact between the child and other members of the child's extended family, including, in particular, F.A. and W.A. Exhibit 11 confirmed the schedule of contact between I.S. and her mother, paternal grandmother and her aunt, as facilitated by K.M.

[94] L.C. is requesting that she assume responsibility for the day-to-day care of I.S. Her evidence indicated that she's open to continued contact between the child and member of the child's extended family, subject to appropriate conditions.

[95] K.M. has had the responsibility for the day-to-day of I.S. since the fall of 2014. The child was placed in the care and custody of K.M. and her partner, F.R., by the Minister of Community Services under the auspices of a Third-Party Supervisory Order after the Minister concluded that it would be in the best interest of the child that she no longer be cared for by her parents due to her parents' history of substance abuse and domestic violence.

[96] K.M. and F.R. maintained responsibility for the child's day-to-day care throughout the protection proceeding until the Minister requested termination in October 2015. Since termination they have continued to have responsibility for the child's day-to-day care by consent of the parties. I.S. has therefore been in the day-to-day care of K.M. and F.R. for approximately two years.

[97] Prior to the commencement of the protection proceeding in the fall of 2014 I.S. was in the day-to-day care of her parents, L.R. and B.S. Her parents struggled with substance abuse issues which impacted negatively upon their relationship as well as their ability to parent. While L.C. had fairly frequent contact with I.S., the nature and extent of her involvement was affected by the parents' lifestyle.

[98] L.C. proposes that she assume responsibility for the day-to-day care of I.S. K.M. is requesting that I.S. remain in the care and custody of herself and F.R. W.A. is currently supportive of K.M.'s plan but, in the alternative, takes a position that if the child is not to remain in the day-to-day care of K.M. and F.R., then the child should be placed in her day-to-day care. L.R. supports K.M. B.S. supports L.C. I'll have more to say about the respective parenting proposals later in my decision.

[99] No evidence was offered with respect to the child's cultural, linguistic, religious, and spiritual upbringing and heritage. During the course of the proceeding the Court declined to authorize a Voice of the Child Report. This decision was premised upon the parties' shared understanding that the child was eager to please members of her extended family and described as being quite malleable. At the time the request was made the child was eight years old. Given these circumstances the Court concluded that it would not be appropriate or necessary to ascertain the child's views and preferences.

[100] The evidence indicates and confirms that the child has a loving and positive relationship with both L.C. and K.M., as well as W.A. The child also appears to enjoy a positive and loving relationship with her mother, L.R. B.S. chose not to participate in the protection proceeding and left to pursue an employment opportunity in Alberta. In his evidence he suggested that he made this decision because he was emotionally distraught following the intervention of Child Protection and needed to separate himself from the situation because he didn't want his daughter to see him break down. He continues to work and live in Alberta at this point in time. He has had limited contact with I.S. for some time. B.S. did have a brief but apparently positive visit with I.S. during the week of trial and indicated that he would like to continue to have the opportunity for such contact in future. The Court is, therefore, not in a position to comment further upon the nature and strength of the relationship between B.S. and I.S. at this point other than to confirm that his decision to leave the province has obviously impacted negatively upon his relationship with the child.

[101] I have just finished commenting upon the relationship between the child and her grandparents, parents, and members of her extended family. The evidence, however, also suggests that I.S. has a very positive relationship with her step-sibling, S., and her half-brother, B., who also, of course, reside in the K.M.-F.R. household. There is no evidence of any negative interaction between I.S. and the other children except for her step-sibling, A., but the evidence relating to their relationship did not suggest any significant cause for concern.

[102] The evidence indicates that K.M. has established the ability to communicate and cooperate on issues affecting the child with the child's mother, L.R. They've been able to communicate and agree upon appropriate arrangements for supervised access. In addition, K.M. has facilitated contact between I.S. and L.C., as well as I.S. and F.A. and W.A. While initially there were some difficulties in communication, it appears that for the past several months K.M. has done her best to facilitate regular and meaningful access between I.S. and her mother, her paternal grandmother L.C., as well as her great-aunt and uncle, W.A. and her husband, F.A. K.M. indicated that she was open to B.S. having contact with I.S.

[103] L.C. also indicated that if she had responsibility for day-to-day care of I.S. she would be willing to allow I.S. to have contact with family members. L.C. did indicate that she believes I.S. should know her family and indicated that she would allow contact as long as extended family were nice to I.S. and not upsetting her.

[104] L.R. expressed concern that she would have less contact with her daughter if L.C. was responsible for I.S.'s care because she and L.C.'s relationship has not been a positive one. At present, L.R. and L.C. do not communicate with each other. It is clear to the Court that L.C. would certainly be supportive of continued contact between I.S. and her son, B.S.

[105] In closing submissions, counsel have suggested that the Court should make credibility findings. In determining credibility it is, of course, important to bear in mind that the Court may believe none, part, or all of a witness' testimony and may determine what weight, if any, should be attached to different portions of a witness' evidence. In this particular case, I believe that Ms. Severns was correct when she suggested during closing submissions that all of the parties have given self-serving testimony in this case. Indeed, the experience of the Court in custody cases is that generally the parties involved in custody disputes usually attempt to portray themselves in a positive manner in an effort to obtain a desired outcome. There's nothing unusual or surprising about this. However, the fact that parties attempt to put their best foot forward does not necessarily justify or warrant an adverse credibility finding.

[106] In assessing credibility and making credibility findings in this case, I would confirm that I have carefully considered the totality of the evidence. I find that the Applicant, L.C., generally gave her evidence in a straightforward and honest manner. On occasion, however, it was clear that L.C.'s evidence was based upon speculation or conjecture. For example, L.C. clearly was concerned that I.S.'s diet in the K.M.-F.R. household was not as nutritious as it should be. She did not, however, indicate any understanding of the child's actual diet as testified to by K.M. On another occasion she felt that unusually bad breath on the part of the child indicated constipation and bowel problems, yet she did not make any effort to arrange for medical examination or to seek a medical opinion and admitted that she should have done so during cross-examination. K.M. testified that as a result of L.C.'s concerns she arranged to have I.S. seen by her family doctor, Dr. Ferguson, and he did not identify or note any problems or health issues.

[107] L.C. also voiced a concern about the child's hygiene. Again, she described the child having extremely dirty fingernails and dirty toes and feet during the summer. She also expressed concern that the child's toenails were down-turned. She took photographs in an effort to document her concerns. K.M. testified that during the summer I.S. wears Crocs and flip-flops. She frequently plays outside and in the yard and may get into dirt or mud when playing. She referred to I.S. as

a bit of a tomboy. However, she also indicated during her evidence that the children take baths on a regular basis.

[108] I.S.'s mother, L.R., testified that she also has down-turned toenails and suggested that this may be a hereditary trait. She also, of course, testified as to I.S.'s footwear during the summer months and her play activities.

[109] K.M. testified that she's actually taken I.S. to the IWK hospital and that I.S. is currently participating in a treatment program to assist her in being able to bend her feet. She explained to the Court that she undertook this action after she observed that I.S. was what she referred to as a "toe-walker" and found that she could not bend her feet past 90 degrees.

[110] Again, despite limited opportunity to observe the inside of the K.M. household, L.C. expressed concern about the cleanliness of the home. During her testimony, K.M. described the home in some detail and acknowledged that the home is cluttered but also described the cleaning routine that she maintains. She also addressed concerns that L.C. had raised with respect to the exterior of the home.

[111] There is no doubt that the K.M.-F.R. household is a busy household with seven children of various ages. It is also reasonable to assume that the standard of housekeeping that K.M. is able to maintain, given her circumstances and the household circumstances, may be very different than from that which L.C., as an adult living alone in her own home, is able to maintain. The fact that the housekeeping standards may be different does not necessarily justify a finding that one standard is to be preferred over the other or is more consistent with the best interests of the child.

[112] When it comes to L.C.'s expression of concern relating to nutrition and diet as well as hygiene and housekeeping the Court is not prepared to place much weight on the evidence of L.C. in relation to these issues. From the Court's perspective, the concerns relating to child nutrition and diet are based primarily upon speculation. The expression of concern with respect to hygiene, while understandable, has to be understood and evaluated in the context of the other evidence, which offers a reasonable explanation for what L.C. observed and again indicates that reasonable hygiene standards were being maintained.

[113] Similarly, the Court is unable to put a great deal of weight upon L.C.'s observations with respect to the interior or even the exterior of the K.M. home.



L.C.'s opportunity for observation of the interior was limited. Housekeeping standards vary from person to person and situation to situation. As Ms. Severns, herself, acknowledged on behalf of the Applicant during her submissions, the requisite standard is not perfection. There are different lifestyles and environments associated with rural versus urban homes and households. Even in the rural setting there may be a difference in lifestyle and home environments between a farm residence and a non-farming residence.

[114] The Court also notes that in this particular instance the K.M.-F.R. home would have been subject to Agency oversight for an extended timeframe, given the Third-Party Supervision Order relating to I.S. in the context of the Child Protection proceeding. There was no evidence indicating any issue or concern relating to I.S.'s care or condition of the home on the part of the Agency. Indeed, the preponderance of evidence justifies and supports the conclusion that I.S. has thrived during the period of time that she has been living in the K.M.-F.R. The Court also notes that W.A., the child's great-aunt, who has had regular contact with I.S., did not raise any issues or concerns with respect to the child's nutrition or hygiene.

[115] The physician's report submitted by Dr. Ferguson, Exhibit 14, entered by consent, confirms that I.S. is healthy and happy. L.R. confirmed that I.S., her daughter, is healthy and happy and thriving in her stepmother's care. W.A. also testified that the child was doing well and happy to the point where F.A. and W.A. were no longer requesting care and custody but were instead supporting K.M.'s request for continued care and custody.

[116] I acknowledge that T.A. expressed some concern about the exterior of the K.M.-F.R. home on the one occasion that she visited there during the week of trial. However, once again, the Court is not prepared to draw any significant negative conclusions, given T.A.'s limited opportunity for observation.

[117] I also acknowledge that B.S. expressed concern about the condition of the K.M.-F.R. His evidence, however, must be considered in light of the fact that B.S. has not had any opportunity to observe the interior of the home for some time. The Court has reservations with respect to B.S.'s credibility, which I will comment more upon later in this decision. On balance, however, I am unable to attach significant weight to B.S.'s observations and have concluded that the reliability of his evidence, to a great extent, must be considered in light of his desire to support his mother's application.

[118] I do have some reservations with respect to the testimony of K.M. She denied the children working in the woods with F.R., and her evidence is clearly inconsistent with the evidence of W.A. and L.R., who both testified to observing the older children working in the woods.

[119] Indeed, L.R. testified that as a child herself she helped her father in the woods. The primary role of the children would be to load wood into a truck. I accept the evidence of L.R. and W.A. in preference to that of K.M. on this particular point. Generally, however, I am satisfied that K.M. also gave her evidence in a straightforward and honest manner. There was no evidence suggesting that I.S. has been requested to undertake any inappropriate chore or task by K.M. or F.R.

[120] W.A., in her evidence, spoke of an incident where, on one occasion, she observed K.M. pin a visiting child against a wall when the child apparently refused a request from K.M. However, the Court was not provided with specific evidence as to how forcibly this was done or how long the child was held or the reaction of the child. It appears to have been an isolated incident. There was no evidence indicating that K.M. has ever used inappropriate physical force in disciplining her children or I.S. She is the primary caregiver and disciplinarian, and again the Court notes that despite the information in W.A.'s affidavit, W.A. confirmed under oath her continued support for K.M.'s continued care and custody.

[121] In one instance L.C. testified that she observed K.M. disciplining I.S. about missing mittens. L.C. felt that rather than talking to the child K.M. engaged in a rant. K.M. denied that she rants to the children but admitted that on occasion she speaks sternly and in a louder-than-normal voice. Aside from this one incident, there was no evidence suggesting the possibility of any inappropriate disciplining of I.S. by K.M.

[122] I find that L.R. gave her evidence in a candid and straightforward manner. She readily acknowledged that she had made a false allegation against her father when she was younger and that it caused significant damage to their relationship. She explained her decision to support K.M.'s request for continued custody in a straightforward fashion. She is obviously pleased by the fact that she and K.M. have been able to communicate reasonably in relation to her supervised contact with her daughter. She also confirmed that I.S. is happy and doing well in the K.M.-F.R. household. She also, of course, acknowledged that she and L.C. have had a difficult relationship and she again expressed concern that if L.C. had care and custody of I.S. their past relationship might impact negatively upon her

opportunity for contact with her daughter. The Court finds this concern on the part of L.R. to be certainly understandable.

[123] W.A. was a credible witness. Her affidavit, Exhibit 7, was sworn prior to her decision to support K.M. She explained the reasons for change in position, noting that I.S. was happy and doing well in the K.M.-F.R. home. Her decision was also based upon direct conversation with I.S. and what I.S. had told her. W.A.'s affidavit confirms that originally she had concerns with respect to the parenting plans of both K.M. and L.C. and provides insight or specifics as to the basis for her concerns.

[124] The concern with respect to L.C. was premised upon information provided by B.S., who had told her that as a child he was hit often by his mother and that he did not want I.S. to live with L.C. and experience what he had as a child. B.S. denied the information set forth in paragraphs 28 and 29 of W.A.'s affidavit. He testified that as a child he was never hit by his mother.

[125] The Court has reservations with respect to B.S.'s credibility. The Court acknowledges that at time of B.S.'s conversation with W.A., he and his mother were estranged. The Court accepts the evidence of W.A. in preference to that of B.S. in relation to paragraphs 28 and 29 of W.A.'s affidavit. Again, the Court finds that B.S.'s denial of the conversations as referred to in W.A.'s affidavit has to be considered in the context of his desire to support his mother's application.

[126] In his testimony, at one point B.S. also expressed his belief that K.M. would not be supporting I.S. with her homework. This was an opinion based upon pure speculation given his lack of contact with his daughter. The Court accepts the evidence of K.M. in preference to that of B.S. on this issue. The Court also has to express its concern with respect to B.S.'s admission that he has not offered any financial support for his daughter despite his employment in Alberta.

[127] While B.S. is to be commended for the changes he has made in his lifestyle, his testimony wherein he indicated he would not pay child support if his daughter remains in the care of K.M. and F.R. is disturbing. His rationale for his position was that he is concerned that if he provided support the money would be used for the benefit of the other children and not just I.S. B.S.'s position is unacceptable to the Court and incompatible with his legal obligation to support his daughter. It is inconsistent with her best interests. B.S. could have attempted to address his concern by entering into an appropriate arrangement or understanding with K.M. such as an agreement based upon the opening up of a special or separate bank

account for I.S. Mr. Strong has never discussed the issue of child support or his concerns with K.M.

[128] As Applicant, L.C. bears the onus of proof with respect to her application. She must satisfy the Court on balance of probability that it would be in the best interest of I.S. to place her in L.C.'s care and custody. Similarly, by way of her response application K.M. must satisfy the Court on balance of probability that it would be in the best interest of I.S. that she remain in her care and custody. As already noted, the best interests of I.S. are the paramount consideration in determining this matter and I would confirm that in deciding this case I have attempted to adopt a child-centric, or focused approach with respect to determination of best interests. I have considered all the relevant circumstances, including those enumerated in s. 18(6) of the **Maintenance and Custody Act** as are applicable.

[129] In determining best interests, I have considered and reviewed all of the evidence and also considered the submissions of counsel and the applicable legislation and case law.

[130] It is important to recognize that the fact that the child has been in the care of K.M. for some time now does not justify or support the conclusion that that status quo confers some advantage upon K.M. or that her views or preferences are to be afforded more weight or recognition by the Court in the determination of best interests. However, the fact that the child has been in K.M.'s care for more than two years is obviously a circumstance that the Court has to consider in determining the child's best interests.

[131] Clearly, the fact that I.S. ended up in the K.M.-F.R. household was due to a combination of events and circumstances and not as a result of any planned or deliberate action on the part of K.M. However, the Court also has to recognize the willingness on the part of K.M. and F.R. to intervene to ensure the safety and welfare of the child when it was necessary and their willingness to assume the responsibility for the child's care when asked to do so by Child Welfare authorities. The Court accepts that L.C. would have done the same had circumstances been different.

[132] The evidence indicates and confirms that K.M. and F.R. provided appropriate care for I.S. in accordance with the Agency's request and directions throughout the Child Protection proceeding. At no point did the Agency express any concerns with respect to K.M.'s care or parenting of I.S. The Court accepts

that the current request for continuing care and custody by K.M. is based upon a continuing concern for the welfare of the child and the belief that it would be in I.S.'s best interest that she continue to live in the K.M.-F.R. household.

[133] On the other hand, the Court accepts that L.C.'s request for care and custody is also genuinely motivated based upon concerns for I.S.'s welfare and a sincere belief on the part of L.C. that it would be in I.S.'s best interest that she reside with L.C. The Court also accepts that L.C. has a genuine conviction that she can provide a better home for I.S.

## **CONCLUSION**

[134] I find that the evidence supports and justifies the conclusion that I.S. has thrived during the period of time that she's been resident in the K.M.-F.R. home and a member of their family. All witnesses described I.S. as a healthy and happy child. She loves school. She's certainly done well at her current elementary school. She appears to be an extremely outgoing and vivacious child. She's obviously benefited from the love and affection that she has received as a member of the K.M.-F.R. household, as well as the love and affection that she has continued to receive from her mother, her paternal grandmother, and other members of her extended family, including, in particular, F.A. and W.A. In many respects, it is obvious to the Court that I.S. is a very fortunate child.

[135] Based upon careful and deliberate consideration of all the evidence, the Court is unable to conclude that it would be in I.S.'s best interests to place her in the care and custody of L.C. The Court, based upon the evidence, is unable to conclude that the concerns, as noted and expressed by L.C. in her affidavit and *viva voce* testimony, relating to I.S.'s hygiene, health, and home environment justify and support the conclusion that it would be in the child's best interest to place her in L.C.'s care.

[136] The Court acknowledges that the K.M.-F.R. household is a busy household given the number of children, and the Court understands the associated concern that there is a possibility that I.S. may not receive the kind of support or attention that she may need or require if she remains in their household. However, based upon the evidence before the Court, the Court can only conclude that I.S. has, to date, received all the support and attention that she requires to thrive, not only within their household but also in her educational program.

[137] In reaching this conclusion, the Court, of course, recognizes that a single-parent home can also provide an appropriate and loving home environment for a child or children. There is no perfect parenting style. There is no such thing as a perfect parent. There is no such thing as a perfect family. In determining best interests, the Court obviously must be satisfied that the parenting provided to the child is reasonable and adequate to meet the child's needs. The evidence supports and justifies the conclusion that the parenting provided by K.M. to date has been more than adequate to meet I.S.'s needs.

[138] The Court also finds that a change in custody in favour of L.C. would obviously have significant impact upon I.S. She would be required to leave the family home that she has known for the last two years. It would disrupt her existing relationships with her siblings, including in particular her stepsister, S., but also her brother, B. It would mean a change in school. It would mean a change in the relationships with her existing schoolmates and peers. It would mean a change in community. It would potentially impact upon her relationship with her mother and other members of her mother's extended family. It would obviously mean a significant change in home environment where she would go from being a member of a large family involving a number of siblings to being a single child with a single caregiver.

[139] While one can express optimism about I.S.'s ability to adapt to such a change without difficulty, it nevertheless would involve a significant change with an associated degree of uncertainty and unpredictability. I am unable to conclude that such a move would be consistent with I.S.'s best interests.

[140] Accordingly, I have concluded that it would be in I.S.'s best interests that she remain in the care of K.M. and her partner, F.R. Given this conclusion, it is not necessary that I consider W.A.'s alternative position.

[141] On the issue of future access contact between I.S. and her parents and members of her extended family, I want to encourage everyone to consider that as I.S. gets older, increasing consideration will have to be given to I.S.'s views and preferences. Appropriate consideration is going to have to be given to I.S.'s extracurricular activities as well as her important relationships with friends and peers. All family members are, therefore, going to have to recognise that their desire to have regular and meaningful contact with I.S. is going to have to adapt or modify to take into account I.S.'s age and development. There will undoubtedly be a need to modify or change scheduled contact depending upon circumstances, and

the Court hopes that all of the interested parties will demonstrate an ability to be reasonable and flexible in regards to I.S.'s best interests.

## **TERMS OF THE ORDER**

[142] The Court, therefore, orders as follows:

[143] The child, I.S., shall be in the joint care and custody of K.M., F.R., and L. R. K.M. and F.R. shall be primarily responsible for the day-to-day care of the child and the child's primary residence shall be with K.M. and F.R. K.M. and F.R. shall endeavour to involve L.R. in any significant parenting decisions with respect to I.S. However, in the event of any disagreement with respect to any significant parenting decision, K.M. and F.R. shall have the ultimate decision-making authority.

[144] Both L.R. and B.S. shall be permitted to make direct inquiries to third parties, such as healthcare providers or teachers or school officials, in order to obtain information with respect to the child's healthcare or educational program.

[145] L.R. shall be permitted to have reasonable parenting time with the child, I.S., as agreed to between L.R. and K.M. L.R.'s parenting time shall continue to be subject to appropriate supervision as approved by K.M. unless or until K.M. determines that supervision is no longer required and the Minister of Community Services also authorizes unsupervised parenting time.

[146] L.C., the maternal grandmother, shall continue to have contact with the child, I.S., every second weekend from Saturday to Sunday. L.C. shall be responsible for pickup and return of the child at the times as agreed to by L.C. and K.M. L.C. and K.M. may agree to vary or change the schedule of contact by mutual agreement. K.M. shall keep L.C. reasonably informed as to any significant parenting issues relating to I.S.

[147] B.S. may be permitted to have parenting time with I.S., subject to reasonable notice, and a further requirement that any parenting time on the part of B.S. is to be subject to appropriate supervision at all times by L.C. or such other individual as may be approved by K.M. unless and until K.M. determines that supervision is no longer required and also the Minister of Community Services authorizes unsupervised parenting time.

[148] Given B.S.'s current employment and residence in the Province of Alberta, he shall also be permitted to have contact with the child by phone or such other

method as may be approved by K.M. and subject to appropriate monitoring supervision by K.M., or another individual approved by her, and on the schedule as approved by K.M.

[149] W.A. and F.A., the child's great-aunt and uncle, shall also be permitted to have reasonable contact with the child as agreed to by K.M. and W.A. and F.A.

[150] On or before June 1st of each year both L.R. and B.S. shall be required to provide K.M. and F.R. with a copy of their prior year's tax return and any Notice of Assessment or Reassessment as received from Canada Revenue Agency.

[151] I would like to thank counsel for their cooperation and assistance in relation to this matter. Much appreciated. And I am going to ask Mr. Douglas to prepare not only this Order but I would like to have that October 16th Order prepared as well. We do need that for the record. Thank you very much counsel.

Morse, ACJFC