FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. E.W.*, 2019 NSFC 5

Date: 20190403
Docket: FKCFSA-1099627
Registry: Kentville, N.S.

Between:

M.C.S.

Applicant

v.

E.W., C.G., G.P. and L.G.

Respondents

LIBRARY HEADING

Restriction on Publication:

Publishers of this case please take note that s. 94 (1) of the *Children and Family Services Act* applies and may require editing of this judgment or its heading before publication.

Section 94 (1) provides:

> No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this *Act*, or a parent or guardian, a foster parent or relative of the child.

Judge: The Honourable Judge Jean Dewolfe

Heard: March 22, 28 & 29, 2019 in Kentville, Nova Scotia

Written Decision: April 3, 2019

Summary: The Applicant seeks permanent care and custody of two children who have been in the care of their maternal great grandmother. The great grandmother seeks return of one child. The mother seeks placement of both children in her care.

1) Are the children in need of protective services?
2) Is a permanent care order in the children's best interests.

Legislation:

Cases considered:	Nova Scotia (Community Services) v. C.R. 2019, 84 A.M. v. Nova Scotia (Community Services), 2014 NSCA 97
Result:	The children are to be placed in the permanent care and custody of the Minister

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Editorial Notice:
Edited by Judge for grammar, punctuation & readability

Judge:	The Honourable Judge Jean Dewolfe
Heard:	March 22, 28 & 29, 2019, in Kentville, Nova Scotia
Decision:	April 3, 2019
Counsel:	Angela Swantee, for the Applicant Kelly Richards, for G.P. Oliver Janson, for E.W. Kathleen Hutchinson, for C.G.

By the Court:

[1] This is an application by the Minister of Community Services ("the Minister) seeking an order placing two children, A., age 7 and J., age 5, in the permanent care and custody of the Minister pursuant to the *Children & Family Services Act*, S.N.S. 1990, C.5. as amended ("the *Act*"). The Respondent C.G. is the mother of both children. The Respondent G.P. is the father of the older child, A. The Respondent E.W. is C.G.'s grandmother. The Respondent, L.G. is C.G.'s mother, and E.W.'s daughter. J.'s father is deceased.

Background

[2] A. and J. were taken into care on April 17, 2018. They had been in the primary care of E.W. essentially since birth. As a result of the involvement of the Minister, they had been placed in her custody at the termination of two child protection proceedings in 2013.

[3] The Minister's current involvement came as a result of numerous referrals expressing concern about E.W.'s health and her ability to manage the children's behaviours. E.W. was reported to be 70 years old and suffering from COPD.

[4] The Minister's position is that EW. is now unable to adequately care for the children due primarily to her failing health, and the fact that she has no appropriate, reliable back up assistance to care for the children.

[5] E.W. seeks the return of A. to her care. She acknowledges she cannot adequately care for both children and she consents to permanent care for J.

[6] C.G. seeks to have both children placed in her care.

[7] C.G. had not been significantly involved with A. and J. and has had significant mental health and addiction issues. There is a long involvement by the Minister with C.G. and her family since she was a child. C.G. was a child in care from age 11. The Minister does not support placing the children with C.G.

[8] C.G. had two younger children, ages 2 and approximately 1 month of age, who also are in the temporary care of the Minister and are the subject of separate child protection proceedings.

[9] L.G. made application to have the children placed in her care. However, at the commencement of this hearing her counsel was released given that the solicitor/child relationship had broken down. L.G. did not attend the hearing or sign her draft affidavit. In the circumstances, the Court did not consider her plan of care.

[10] G.P. has had no involvement with A. for a number of years. He is unable to have A. placed in his care. He supports the Minister's plan for permanent care and custody of A.

[11] The statutory time lines for this matter do not expire until October 2, 2019. However, the Minister's position is that in the remaining time, neither C.G. nor E.W. can make sufficient changes so as to be able to adequately care for A. or J. and alleviate the protection concerns.

EVIDENCE

[12] Pursuant to s. 96(1) of the *Act*, the Minister filed evidence from the ongoing child protection proceeding with respect to C.G.'s second youngest child, N., as well as the proceedings with respect to A. and J. between 2011 – 2013.

2011 – 2013 PROCEEDINGS

[13] The evidence from the 2011 – 2013 file includes multiple affidavits from the Minister's social workers outlining C.G.'s background and her involvement with services.

[14] The affidavits of **BriAnna Simons** in 2011 and early 2012 report that C.G. had been in the permanent care of the Minister from age 11, and was, at age 19,

pregnant (with A.). She had significant mental health issues although there was no formal diagnosis, was noted to have had several "breakdowns", had been hospitalized as a result, but had not responded to medication . She was unable to manage her emotions, and had a history of drug use including needles. Workers noted that she had had a high frequency of boyfriends and assaults, and a history of living with older men and placing herself at risk.

[15] The Minister submitted a psychological report prepared by **Jackie Trimper**, psychologist of C.G. when she was a 15 year old youth in care. Ms. Trimper noted C.G.'s "strong willed personality", borderline intellectual ability and her demonstrated poor judgment and insight. She noted a long standing diagnosis of ADHD, and issues with sexual promiscuity and drug use at that time.

[16] In 2011, C.G. told workers that she would not cooperate with any services. She was involved in a domestic violence incident shortly before A.'s birth. She was also on probation at that time.

[17] After A.'s birth, the Minister initially allowed C.G. to care for A. under supervision of a friend of E.W.'s with whom C.G. was boarding. In early 2012, with the Minister's approval, C.G. and G.P. moved in together with A. This

arrangement quickly fell apart resulting in assault charges against G.P. A. was then placed with E.W.

[18] C.G. was referred or self referred for individual and couples counselling, anger management and addictions assessment, but did not fully follow through and/or progress with these services.

[19] **Sheila Bower-Jacquard**, psychologist, prepared a parental capacity assessment with respect to C.G. and A. in June 2012. She described C.G. as having very poor stability in all areas of her life and limited to no supports from friends and family. While E.W. was seen as a support, it was noted that at times there was significant conflict among C.G., E.W. and L.G.

[20] Ms. Bower-Jacquard identified significant learning challenges for C.G., and noted that C.G. had inconsistently attended a number of services provided by the Minister.

[21] Ms. Bower-Jacquard recommended that C.G. not have full time care of A.

[22] In July 2013, J. was born. The affidavit of Agency social worker **Julie West** noted that C.G. was using non-prescribed prescription drugs immediately prior to J.'s birth, and J. was born addicted to opiates.

[23] J. was placed with E.W. (& A.) in August 2013 when he was discharged from hospital. C.G. began a methadone replacement program to treat her opioid addiction in August 2013.

[24] The Agency Plan of Care dated November 14, 2013 described E.W. as a "protective caregiver" who was able to meet the needs of A. and J. The Minister agreed to terminate the child protection proceeding in favour of a custody order placing A. and J. in E.W.'s primary care, with supervised access for C.G.

2017 PROCEEDING

[25] C.G.'s third child, N. was taken into care at birth in March 2017. As part of that proceeding **Dr. Risk Kronfli** prepared a psychiatric assessment on C.G. dated August 14, 2017. His report was admitted by consent pursuant to s.96(1) of the *Act.*

[26] Dr. Kronfli noted that C.G. denied all Agency concerns at that point, and that she became "verbally aggressive, hyperactive, and confrontational, demonstrating a tendency to jump from topic to topic" (p.39). C.G. admitted to having significant trust issues, anxiety and a short temper. Dr. Kronfli described her as a "lifelong victim of emotional, physical and sexual abuse by various men with whom she had come in contact", and "largely unable to manage her emotions

in order to cope and manage her decisions and actions effectively on a day-to-day basis" (p.40). Dr. Kronfli diagnosed severe adult ADHD and, a serious substance use disorder in early remission. He noted that C.G. had self medicated in order to manage her emotions. He described her as highly reactive, volatile, angry, irritable, confrontative and very easily triggered with a clear delay in emotional maturity and no coping mechanisms (p.41).

[27] Dr. Kronfli recommended an increased dose of ADHD medication, and failing improvement, a change in medication. Once her symptoms were controlled, he recommended long term "CBT with coaching" to improve her functioning.

CURRENT PROCEEDINGS

[28] The affidavits of **Trina Warren** and **Ashley Colville** describe the circumstances leading up to the current proceeding.

[29] In 2016, E.W. asked the Minister to provide respite care for the children while she was in hospital for surgery and during her recovering. However, this was not possible on short notice.

[30] In May 2017, E.W. reported that she had been having trouble caring for the children due to her health, and had sent them to stay with L.G. The Agency received several referrals regarding J.'s behaviours and L.G.'s parenting. The children came back to live with E.W. in the fall of 2017. L.G., E.W. and C.G. engaged in conflict which the children witnessed during this time. L.G. refused to return the children to E.W., and E.W. required assistance from the Minister to have the children returned to her care.

[31] In January 2018, E.W. placed the children in the Minister's temporary care for a brief period of time while she was undergoing surgery.

[32] Reports from the children's school noted increasing concerns as to E.W.'s ability to control the children. They noted J.'s out of control and dangerous behaviour at a wellness clinic and while E.W. was transporting him in her car. Similar reports were received from J.'s mental health counsellor, and neighbours. J.'s defiance and aggression were noted by social workers during a home visit in April 2018. The children were taken into care shortly thereafter.

[33] The affidavit of **Jennifer Davidson**, supervisor, described the early placements of the children and contact with E.W.

[34] **Kathleen Archibald,** the children's social worker since November 2018, described the children's placements, behaviours and services after they were taken into care.

[35] Initially, the children were taken to an emergency foster home for approximately one week. Then they were taken to a local place of safety so as to allow A. to complete the school year at her existing school. J., who was not in school, was placed in his current foster home outside of the school district, and A. joined him there on weekends. A. was placed in a temporary foster home in her school district during the week in May and June 2018. She was placed in J.'s foster home after school finished in June 2018. She remained with J. in that home until December 2018 when she was placed at a place of safety due to her behavior issues in the foster home. She stabilized and was returned to the foster home after approximately 2 weeks.

[36] In January 2019, A. was again removed from the foster home due to her aggressive and oppositional behavior, and placed at AKOMA in Dartmouth, a group home for young children with higher needs. She continues to reside at AKOMA.

[37] A. has exhibited concerning behaviours while at AKOMA including suicidal ideation. She has switched schools twice in the past 6 months due to changes in her placement.

[38] J. remains in his foster home and his behaviours have improved since A. left. Access between the siblings has commenced and is going well. Ms. Archibald was recently able to drive J. to and from access (40 minutes each way) without incident.

[39] Ms. Archibald currently describes A. as stable for the most part. She and J. have both been referred for psycho neuro assessments (including assessment for fetal alcohol spectrum disorder). A. is attending counselling with a new therapist. She is no longer on ADHD medication . J.'s risperidone dosage has been reduced as his behavior has improved. He has also been referred to an occupational therapist.

[40] E.W. has had regular access by telephone and in person since A. and J. were taken into care. C.G., L.G. and G.P. have not had access to the children since they were taken into care.

[41] In cross examination, Ms. Archibald only recalled two instances when E.W. had difficulties controlling the children's behaviours during access. She also

recalled one or two occasions when E.W. seemed to blame the children for their circumstances and made them feel bad. However, for the most part access has gone well.

[42] **Shannon MacLeod,** adoption social worker, testified that the Minister's plan is for A. and J. to be adopted together by third parties, and that their current ages and behavior would not be an impediment to adoption.

[43] **Lael Aucoin** is the current long term social worker for the Respondents in this proceeding and the two concurrent proceedings involving C.G.'s younger children. Ms. Aucoin noted that until recently, C.G. had not begun to follow through on recommendations made by Dr. Kronfli. In December 2018 C.G. told Ms. Aucoin that she did not need counselling. Ms. Aucoin indicated that she understood C.G. was now seeing a counsellor and had started C.B.T. therapy. She also noted that neither C.G. nor E.W. had requested services from the Agency.

[44] C.G. lied to Ms. Aucoin when, in December 2018, she denied that she was pregnant, only to give birth three months later.

[45] Ms. Aucoin recounted conversations with C.G. in December 2018 and March 2019 in which C.G. portrayed herself as having been a significant caregiver for the children while they were in E.W.'s care.

[46] In March 2019, C.G. told Ms. Aucoin she was tired, had no food and had no one to help her, and said she just wanted to be given a chance. Ms. Aucoin described C.G.'s behaviour as "erratic". C.G. jumped between topics in conversation, and moved around while speaking.

[47] Ms. Aucoin testified that E.W. had had numerous community resources engaged at the time that the children were taken into care and the Agency could not offer anything more than that which had already been in place prior to the children coming into care. She also noted that while E.W. had indicated her health had improved after moving to a home without mold, E.W. continued to exhibit breathing problems during recent access.

[48] Ms. Aucoin identified the Minister's primary concern was E.W.'s ability to manage the children's behavior, to transport the children to appointments such as occupational therapy, speech therapy, counselling and medical appointments, and to ensure they attended school/daycare, on a consistent basis. The Minister also did not consider E.W.'s daughter, C., as a reliable and available support for E.W., given that she had not helped significantly in the past, and given her history of addictions and criminal activity.

EXPERT REPORTS

[49] The Minister entered by consent, a psychological assessment of A. dated April 20, 2016 prepared by **Dr. Tara Szuszkiewicz**, in which she reassessed A. for Autism Spectrum Disorder. A previous assessment had been carried out in 2015, at which time A. had not met the criteria for this disorder.

[50] Dr. Szuszkiewicz noted that A. was being followed by an early interventionist, speech language pathologist and family doctor at that time**.**

[51] In 2015, A. had presented with below average cognition and delays in a number of areas. In 2016, Dr. Szuszkiewicz recommended occupational therapy to address her writing issues, preparation of a psychoeducational assessment in grade 3 or 4, and potentially an ADHD assessment after grade primary. She described A. as a "delightful" girl who had made gains since 2015 in terms of attention and test behavior.

[52] **Dr. Stephen Theriault,** psychologist, prepared a psychological assessment of J. in April 2018, which was admitted by consent. Dr. Theriault noted that J. had been referred by Valley Child Development as a result of his delays in speech, motor skills and social skills. At that time, Dr. Theriault noted both J. and A. were

reported to present with behavior problems, and J. was attending daycare three times a week.

[53] J. was noted to have a very short attention span and as being "markedly impulsive" as well as defiant. Dr. Theriault determined that J. faced an "overall developmental delay of at least two years", although Dr. Theriault placed him at a 3.1 year level, noting his "extremely disruptive behavior". E.W. described J. and A. as "runners". Despite the usual rule of not diagnosing children for ADHD before age 6, Dr. Theriault recommended that J. be assessed at age 4 for ADHD, as well as autism.

[54] **Wendy Green** was qualified as a clinical social worker with expertise in the area of child therapy, working with children who have experienced trauma. Ms. Green provided therapy to A. and J. between August 2018 and December 2018. Her February 14, 2019 report was entered as an exhibit. Ms. Green testified and was cross examined.

[55] In her report, Ms. Green noted that Dr. Hilliard, (pediatrician) had diagnosed J. as not meeting the diagnostic criteria for ADHD but had believed J.'s behaviors to be the result of trauma. She also reported that J. had been prescribed

Risperidone "to assist him in managing his aggressive behavioural outbursts". (Ex. 4, p. 104)

[56] Ms. Green worked with the children and foster parents on a "trauma informed" basis to assist the children in self regulating and the foster parents in managing the children's behaviours.

[57] With respect to A., Ms. Green noted (Ex.4, p.105):

> **"It was noted that providing too much reassurance to A. was not productive in that it provided an opportunity for A. to escape the adult direction to attend and follow through with expected tasks. An approach involving, setting limits, holding expectations, high empathic responses and high expectations (understanding where she lacked skill) was encouraged. When setting limits and expectations, little discussion and not engaging in power struggle was encouraged. Providing clear and short directives for the children was recommended, followed by praise for accomplishment. A. would refuse to attend school, falsify illness and refuse to complete non preferred tasks such as homework or small tasks as requested by the foster parents. She was also reported to be a flight risk on outings with her foster parents. In therapy, A. would state that "nice people would let her do what she wished and gave the example that her grandmother would allow her to "act up" in the store, where her foster parents would not".**

[58] Ms. Green indicated that the children's caregivers may need training in non violent crisis intervention. She also noted that the foster parents found that A. and J. were "provocative" with each other and were "seemingly pleased when the other required discipline". Ms. Green saw this as an expression of a need for an adult to assume an appropriate level of control.

[59] Ms. Green recommended neuro psychological assessments for both children. In her testimony before the Court, Ms. Green described J. and A. as having some of the most complex needs of any of the children she has seen in over 30 years as a therapist. She described both children as being "quite delayed" over a wide range.

[60] It was her impression that both children had been exposed to trauma for a significant period of their respective lives. She noted that children who had lived in chaotic environments are impacted negatively in their ability to function and develop. She observed personality traits and behaviours in both children which led her to believe that the children had been negatively impacted by trauma prior to coming into care, noting in particular, their disruptive behaviours, trust issues and disregulated emotions and interpersonal difficulties. She agreed that events such as changing foster homes and schools would be traumatic as well for A.

[61] Ms. Green testified that both children required above average, safe, stable, structured, "trauma informed" parenting. She expressed her opinion that J. and A. had not received sufficient attention to address their deficits prior to coming into care, and that they continued to require a high level of care, with particular attention to identification and regulation of emotions.

RESPONDENTS' EVIDENCE

[62] **C**., (C.G.'s aunt and E.W.'s daughter) provided an affidavit, testified and was cross examined. She indicated that although she lived 5 – 6 hours' drive away, she was willing to support E.W. in her care of A.

[63] On cross examination, C. admitted that she had had longstanding addiction issues, but had been clean (with one slip) for approximately three years. She had not raised her own children for much of their respective childhoods due to her addiction issues. She also had numerous criminal convictions over 30 years due to her drug use. C. admitted that she had not assisted E.W. in 2017 and 2018 during E.W.'s periods of hospitalization and poor health. C. testified she is not on methadone and has not participated in a rehabilitation program, but, rather had become "clean" of drugs on her own.

[64] **C.F**., has been E.W.'s neighbour for the past 6 – 7 months. She provided an affidavit in support of E.W., and indicated that she would be willing to assist E.W. for short periods of time if A. was in E.W.'s care. C.F. testified that her husband is ill and cannot be left alone except for short periods of time. She does not drive and has not spent any time with A.

[65] **E.W**. provided two affidavits, testified and was cross examined. She described her significant efforts to provide for J. and A.'s health and developmental needs. She admitted that she had had significant assistance from a community organization to transport J. to daycare and health appointments. She also noted that A.'s educational assistant had been coming to E.W.'s home to get A. ready for school and ensure she attended. E.W. described that she was frequently unable to drive the children in her car because they refused to sit and wear a seatbelt. She also described the children as "runners", who would often not stay in her yard.

[66] She described the children as having "some" developmental delays but felt their behavior was improving by April 2018.

[67] E.W. indicated that she had recently moved to a different residence which was mold free and on one level, and that this had led to improvement in her health. She indicated that she did not need to use oxygen as much, only if she moved quickly, went up stairs, or walked a longer distance. She admitted she still tires easily and gets out of breath with exertion.

[68] She agreed to J. being in the Minister's permanent care as he seemed to be doing well in foster care. She acknowledged that care of the two children would be too much for her.

[69] She expressed concern about A.'s recent behaviours and the breakdowns in her foster home placement. She indicated she would follow through with A.'s services such as counselling as she had done in the past.

[70] E.W. admitted that she had allowed C.G. unsupervised contact by allowing her to take J. and A. for brief walks, and by leaving her with them while she went to the store on a couple of occasions. She recognized that this was contrary to her custody order, but felt that she had been able to judge when C.G. was sober and stable enough to have brief unsupervised contact. She testified that L.G. and C.G. were no longer welcome in her home, and that if A. lived with her she would now focus on A.

[71] She felt that allowing L.G. to care of the children in 2017 was a big mistake. She noted that the children's behavior was much worse when they returned to her care in the fall of 2017.

[72] E.W.'s initial plan was for her daughter, C. to move in with her to help care for the children. Her current proposal is that C. would provide respite care as needed, but would not move to the area.

[73] E.W. admitted that she and L.G. had an argument at her residence in 2017 in which L.G. tried to push her down the stairs. She indicated that the children were playing outside at the time.

[74] **C.G.** provided an affidavit, testified and was cross examined.

[75] C.G. clearly has had chaotic, difficult childhood. She is 27 years old and has four children who are not in her care. She has experienced violence, drug addiction, and transiency throughout her adult life. She has few supports and her interpersonal skills are poor. This Court found her testimony to be unfocussed and it was clear that while she loves her children , she has little insight into their needs.

[76] C.G. testified that she was currently staying with a friend, but expected to get her own place in that community in the " next week". This is in contrast to her evidence in her affidavit (sworn a week prior) in which she indicated that she was attempting to rent a home in another community.

[77] C.G. testified that she has been sober more often than not since 2013. She was completely drug free (except for methadone) during her pregnancy with N. in

2016-2017. She has once again been clean since March 2018. Otherwise her evidence was that she had been "mostly sober".

[78] C.G. indicated she had her ADHD medication dosage increased in 2017 after Dr. Kronfli's report. However, she only maintained this dosage for less than 8 weeks, as she found it to be excessive. She explained that the alternate medication recommended by Dr. Kronfli was not covered by Medicare and she has not taken any ADHD medication since becoming pregnant with her youngest child in 2018.

[79] She has attended 3 CBT counselling sessions in 2019 and has agreed to attend 5 more. She started a parenting program in March 2019. She testified that she felt the Agency had never given her "a chance" and had been "against" her "her whole life".

LAW

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

> **"Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:**
>
> > **(a) the importance for the child's development of a positive relationship with a parent or guardian and a secure place as a member of a family;**

(b) the child's relationships with relatives; 1990, c. 5 children and family services 9 MAY 26, 2017;

(c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;

(d) the bonding that exists between the child and the child's parent or guardian;

(e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;

(f) the child's physical, mental and emotional level of development; (g) the child's cultural, racial and linguistic heritage;

(g) the child's sexual orientation, gender identity and gender expression;

(h) the religious faith, if any, in which the child is being raised;

(i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;

(j) the child's views and wishes, if they can be reasonably ascertained;

(k) the effect on the child of delay in the disposition of the case;

(l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;

(m) the degree of risk, if any, that justified the finding that the child is in need of protective services; (n) any other relevant circumstances".

S. 42(2) provides:

"The court shall not make an order removing the child from the care of a parent or guardian unless the Court is satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to Section 13,
(a) have been attempted and failed;
(b) have been refused by the parent or guardian; or
(c) would be inadequate to protect the child".

S. 42(3) states that:

"Where the court determines that it is necessary to remove the child from the care of a parent or guardian, the court shall, before asking an order for

> **temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family pursuant to clause (c) of subsection (1), with the consent of the relative or other person".**

S. 42(4) provides that:

> **"The Court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably unforeseeable tie not exceeding the maximum time limits based on the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c.5, s.41".**

[80] Past parenting history is relevant to the present circumstances: *N.S. Minister of Community Services* v. *L. (S.E.L.),* 2000 NSCA 55.

[81] The Court must be persuaded on a balance of probabilities that placement of A. with E.W., or J. and A. with C.G. continues to pose a "substantial risk", to the children, as defined by the *Act*. This test is aptly summarized by Jollimore J. in *N.S. (Minister of Community Services)* v. *S.C.* 2017 NSSC336, as follows: (para.35)

> 35. **"Substantial risk" is a real chance of danger that is apparent on the evidence: subsection 22(1) of the *Children and Family Services Act.* It is the real chance of physical or emotional harm or neglect that must be proved to the civil standard. That future physical or emotional harm or neglect will actually occur need not be established on a balance of probabilities: *MJB v. Family and Children Services of Kings County,* 2008 NSCA 64 at paragraph 77, adopting *B.S. v. British Columbia (Director of Child, Family and Community Services*), 1998 CanLII 5958 (BCCA"), at paragraphs 26 to 30.**

[82] The total duration for all disposition orders in this matter is twelve months, ie. October 2, 2019: s. 45(2).

[83] However, the Minister submits that it is in these children's best interests that this matter not be prolonged to the outside date of the timeline.

[84] This approach was approved by the Court of Appeal in *T.H. v. Nova Scotia (Minister of Community Services)*, 2013 NSCA 83 where at para. 87 the Court stated:

> **"It has often been said that because of the uncertainty that accompanies a child welfare proceeding, it is in the children's best interests that it be prolonged no longer than necessary ".**

ANALYSIS AND DECISION

C.G.'s Plan

[85] On the basis of the evidence and on a balance of probabilities, the Court finds that C.G.'s plan to have J. and A. placed with her would subject the children to significant risk, pursuant to s. 22.(2)(b) (physical harm); (g) (emotional abuse); (j) and (k) (neglect).

[86] C.G. has longstanding mental health, addictions and interpersonal issues which have not been alleviated. C.G. must address her own trauma issues before she can adequately address the needs of her children. She would not be able to provide adequate care and guidance to A. and J. let alone the "above average" parenting recommended by Ms. Green. She appears to have little insight into the children's needs, blaming the Agency and L.G. for many of the concerns. These children have high needs which C.G. clearly cannot meet.

[87] I am concerned, given her history and the fact that her ADHD is not controlled, that C.G. will not follow through on her current CBT counselling, and will not be able to maintain her sobriety. She has very few supports and a long history of impulsive behaviour. Her long history of transiency continues as of the date of the hearing.

[88] Even if C.G. can follow through with her counselling, maintain sobriety and obtain housing, I am not sufficiently confident that she could make the necessary progress to allow her to adequately parent these children within the statutory timelines.

E.W.'s Plan

[89] On the basis of the evidence, and on a balance of probabilities, the Court finds that E.W.'s plan to have A. returned to her care would subject A. to significant risk, pursuant to s. 22(2)(b),(g)(j) & (k).

[90] E.W.'s care of these children prior to April 2018 placed them at significant risk of physical harm, emotional abuse and neglect. While in her care, she was unable to control the children's behaviours so that they regularly left her yard and experienced dangerous situations (e.g. playing in a swamp) for children of their respective ages. She placed the children with L.G. to "give her a try", a placement which had negative behavioural consequences for the children, and placed them at risk of emotional and physical harm. She allowed C.G. to dictate access and have brief periods of unsupervised access to J. and A., despite C.G.'s instability. She was unable to safely transport the children to school, daycare and medical appointments without significant assistance.

[91] E.W.'s medical condition continues to limit her energy and her ability to respond to the children. Her circumstances limit her supports, and place the children at risk of further chaos and exposure to conflict.

[92] E.W. has little insight into the children's needs. She appears to view J. and A. as having certain "conditions" and needs, but does not recognize that her

parenting has had a negative impact on these children, exacerbating their predispositions at the very least.

[93] E.W. clearly does not have the ability to manage and correct A.'s challenging behaviours even in the absence of J. Given E.W.'s past parenting, I am not confident that she has the necessary ability or support to ensure that A. gets the help she needs on a consistent basis.

[94] There is no evidence that E.W.'s health will improve, but rather she may remain as she is for many years. There are no services in which E.W. can participate to alleviate the protection concerns raised by the prospect of her parenting.

[95] Given E.W.'s health, her history of parenting J. and A., and the lack of reliable and appropriate respite, there are no changes contemplated for E.W. which will allow her to parent the children adequately by the end of the statutory timelines.

[96] E.W. has loved and made her best efforts with these children, but sadly, that is not enough.

[97] No alternate family or community placements pursuant to s. 42(3)(a) exist for these children.

[98] J. and A. need stability, safety and certainty in their lives. It is in their best interests that they be placed in the permanent care and custody of the Minister.

Jean Dewolfe, JFC