

FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. K.H.*, 2020 NSFC 6

Date: 20200401

Docket: FKCFSA-112249

Registry: Kentville, N.S.

Between:

M.C.S.

Applicant

v.

K.H. and A.R.

Respondents

Restriction on Publication:

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

Section 94 (1) provides:

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 3 & 4, 2020, in Kentville, Nova Scotia

Final Written: April 1, 2020

Counsel: Angela Swantee, for the Applicant
Maggie Shackleton, for the Respondent K.H.
A.R., self-represented

By the Court:

[1] This is an application by the Minister of Community Services (“the Minister”) to place four children in the permanent care and custody of the Minister. Ms. H. is the children’s mother; Mr. R. is their father. The two older children are ages 5 and 4 respectively, and the two younger children are 21 month old twins.

[2] Ms. H. seeks the return of the children to her care.

[3] Mr. R. has not seen the children since the spring of 2019. He has not put forward a Plan of Care or taken a position. He attended but did not actively take part in the hearing.

Background

[4] Ms. H. identifies as Inuk. Her mother is Inuk and her father was white. She was born in N.S., moved to N.W.T. when she was 7 years old, returned to N.S. when she was 16, and has resided here since that time. She speaks English and attended English high school for her final years and has worked in an English environment, but is more comfortable speaking Inuk. Ms. H. has one older child A., aged 9, who is in the care of her biological father, and is not the subject of this proceeding.

[5] Mr. R. identifies as biracial (black father and white mother). He has four older children who were placed in the care of his Mother following child protection involvement, stemming in part from alleged domestic violence.

Child Protection Background

(Affidavits of Kathleen Archibald, social worker, dated November 19, 2018 and Louise Layton, social worker, dated January 9, 2019.)

[6] Ms. H. has a 7 year history with child protection. Agency involvement with Ms. H. began in 2013 when police reported an incident of domestic violence between Ms. H. and Mr. R. When interviewed, Ms. H. reported arguments, shoving, “fights”, threats and drinking. She indicated she could “handle” Mr. R., as she had witnessed worse violence than what she was experiencing with him. Ms. H. agreed that she and Mr. R. would not be together in A.’s presence, but soon broke this condition. As a result, in August 2013, A. was placed with A.’s biological father, with Ms. H. having supervised access.

[7] In 2013 and 2014, following A.’s removal from her care, Ms. H. engaged in addictions counselling, a “coping” group and individual counselling.

[8] In 2014, the Respondents agreed to engage in couples counselling and reunited, but did not live together. Mr. R. did not follow through with couples counselling, and denied the domestic violence allegations. After their first child's birth in 2014, Ms. H. and Mr. R. attended couples counselling. However, in November 2014 another referral was received from the R.C.M.P regarding domestic violence in Ms. H.'s home between the Respondents.

[9] In 2015, Ms. H. continued to engage in counselling. A. was placed back in her primary care. Ms. H. admitted that she was struggling to care for A. and the new baby, and allowed A. to be cared for by A.'s father, despite the Agency's direction that she not do so (on account of allegations that he had sexually abused A.) Ms. H. appeared to be struggling with her mental health. She was pregnant again and was feeling "overwhelmed". The Agency directed that she and Mr. R. could not be together in their child's presence. Ms. H. indicated that she and Mr. R. were in an on again, off again relationship.

[10] Ms. H. gave birth to the Respondents' second son in September 2015.

[11] In November 2015, police responded to a domestic dispute at Ms. H.'s home. Ms. H. was reported to be intoxicated and the children were present. Ms. H. alleged that Mr. R. had "choked" her and "flipped" her over a bannister.

Ms. H. admitted to drinking and smoking two marijuana joints. She indicated she had been suffering from depression. Ms. H. spoke with an Agency social worker the next day and indicated she would never reunite with Mr. R. Mr. R. said that Ms. H. had been using ecstasy and prescription medication.

[12] By March 2016, Ms. H. had resumed her relationship with Mr. R. She had attended counselling but was reported to have made minimal progress.

[13] In May 2016, the Agency received a referral of another incident of domestic violence between Mr. R. and Ms. H. The Respondents separated once again and Ms. H. agreed that she and Mr. R. would have no contact in front of the children.

[14] Ms. H.'s Father died in October 2017. He had been a key support for Ms. H.

[15] In December 2017, the Agency received a referral alleging that Ms. H. had slapped A. in the face. Ms. H. reported feeling overwhelmed and frustrated, and indicated that she was taking medication for depression and anxiety. She admitted yelling and throwing a chair in A.'s room. She also admitted that she had been letting Mr. R. visit his two young sons in her presence contrary to her agreement with the Agency. Mr. R. reported that Ms. H. was verbally abusive to the children.

[16] In March 2018, Ms. H. reported she was pregnant. She also reported that she had connected with supports from the Native Counsel.

[17] In June 2018, Ms. H. gave birth prematurely to twins. The Agency received a referral regarding many verbal arguments between the Respondents at the IWK Hospital where the babies were patients.

[18] In June 2018, a passing motorist reported seeing Mr. R. throw Ms. H. on the ground by the side of the highway, while the twins were still hospitalized at the IWK. Mr. R. was charged with assault, and recently received a conditional sentence in relation to the offence.

[19] The twins were discharged from the IWK in August 2018. The male twin experienced a medical emergency after discharge and was readmitted until mid September 2018.

[20] IWK staff noted that Ms. H. had not made plans for the twins' discharge, and that she had not participated in their full care particularly during July when she was noted to often leave the hospital without notice. In September, after the male twin was readmitted, the IWK staff noted that Ms. H. was not waking in the night or getting up in the morning with him. There were concerns that Ms. H. was not capable of managing the twins and responding to their needs.

[21] The Agency explored various options for supporting and supervising Ms. H. with the four children. In September, the Agency provided formula and a part time night nurse for two weeks. Weekly Family Support work was arranged. Ms. H.'s mother moved in with her. Ms. H. indicated that she was seeing a Public Health nurse regularly. The older boys were registered full time in daycare.

[22] Mr. R. and Ms. H. were not to have contact in front of the children, but it was reported that his vehicle was parked at her home in early October 2018. Ms. H. admitted that Mr. R. had been there.

[23] In October 2018, Ms. H. reported that she was experiencing conflict with her neighbours and expressed a desire to move, possibly with Mr. R. She described her resentment that Mr. R. could have a "day off", and sleep while she was raising his four children alone with no support. Ms. H. told workers she had "grown" in the previous year and a half and had better strategies for coping with her emotions and dealing with Mr. R.'s behaviours. Ms. H. also indicated her mother had relapsed in terms of using alcohol and had left her home.

[24] Ms. H. agreed to a safety plan in which two friends would reside with her. This broke down within a week as Ms. H. felt she needed her space. Ms. H.'s

mother moved back in with Ms. H. Ms. H. moved to a larger home and a different community on October 31, 2018.

Current Proceedings

[25] On November 19, 2018, the Minister made the within protection application citing s. 22(2), (b), (f), (g), (i), (j) and (k) of the *Children and Family Services Act* ('the Act').

[26] On November 22, 2018, the Court granted an Interim Order placing the children with Ms. H. under the supervision of the Minister, and providing that Ms. H.'s mother reside with her at least 4 hours a day, that Ms. H. not consume alcohol or non-prescription medication for 12 hours before being in a sole caregiving role, that the children attend all medical appointments, and that Mr. R. only have supervised access with the children as arranged by the Agency. This order was confirmed on December 17, 2018.

[27] On January 9, 2019, the Minister applied to vary the Interim Order, placing the children in the temporary care and custody of the Minister, as a result of concerns relating to Ms. H.'s drinking and her lack of insight into the risks which family violence posed to the children. Ms. H.'s mother told the Minister

that she could no longer supervise Ms. H., and that Ms. H. was frequently drinking and away from the home.

[28] On January 11, 2019, a Variation Order authorized the placement of the children in temporary care and custody, with supervised access for both parents.

[29] A Protection Order made on February 6, 2019, and a Disposition Order dated April 24, 2019 continued the temporary care arrangement.

[30] On July 17, 2019, the older children were returned to Ms. H. under supervision, by Place of Safety staff provided through “Jordan’s Principle” funding. Ms. H. was to have three hours of unsupervised parenting per day.

[31] Ms. H. initially cooperated with Place of Safety staff, but soon expressed that she felt the home was too small for the workers to stay with her. The workers then moved to a travel trailer which they parked in Ms. H.’s driveway, and began to supervise her parenting using baby monitors.

[32] Ms. H. regularly requested parenting support, although the Place of Safety workers were only supposed to supervise her parenting, not assist her. Despite this, they provided assistance at times, including respite while Ms. H. went shopping and went out with friends.

[33] Staff were concerned that Ms. H. appeared to be frequently overwhelmed, and was unable to manage the children's behaviours at times. Ms. H. was noted to yell at the children on numerous occasions. The second oldest child was noted to have numerous tantrums. Ms. H. appeared to be evading the Staff's monitoring by playing loud music and turning off the monitor.

[34] On August 15, 2019, staff heard Ms. H. make hurtful comments to the second oldest child which they considered to be verbal abuse.

[35] Unsupervised parenting time was suspended shortly thereafter. On August 26, 2019, the two older children were placed back in temporary care. They have remained in foster care since that time. The twins have continued to reside in another foster home. Access has continued to be supervised.

[36] Mr. R. has not participated in any services requested by the Minister during this proceeding, other than a mental health assessment and two counselling appointments. He has had no access since April 2019.

[37] The Agency filed its Plan of Care seeking permanent care and custody of the children on November 26, 2019.

[38] The matter was last reviewed on December 4, 2019.

[39] The matter was heard on March 3, 2020 and March 4, 2020.

EVIDENCE

Minister's Evidence

[40] **I.W.K. Perinatal Follow-up Program** reports with respect to the twins were admitted by consent. These reports outline the health challenges experienced by these children whose speech is delayed, but otherwise appear to be in good health and developing normally.

[41] An **Occupational Therapy Assessment** report regarding the second oldest child, dated August 20, 2019, was admitted by consent. This assessment revealed that the child “experiences difficulty in the areas of fine motor skills, sensory processing, and behavior conduct”. Ongoing occupational therapy was recommended for this child.

[42] **Urinalysis** reports for Ms. H. for collections between March 2019 and April 2019 were admitted by consent. Ms. H. consistently tested negative for all substances except Cannabis (THC).

[43] **Monique Simonse** provided a **Mental Health Assessment Report** with respect to Ms. H. dated September 16, 2019, and an Addendum dated November 13, 2019, following review of additional documentation.

[44] Ms. Simonse testified and identified her reports. She was qualified by consent as a psychologist entitled to give expert opinion in the assessment and treatment of individuals with mental health disorders.

[45] Ms. Simonse recounted Ms. H.'s background information as provided to her by Ms. H., and conducted psychological testing and interviews. She reviewed file materials and case recordings, and spoke with three collateral sources at Ms. H.'s request.

[46] Ms. Simonse noted that Ms. H.'s description of her situation after the birth of the twins sounded "overwhelming and extremely stressful" (p. 33). Ms. H. also told Ms. Simonse that her involvement with both Mr. R. and her mother were not supportive or healthy for her, and that she continued to grieve her father, her main support.

[47] Ms. Simonse described Ms. H. as a person who tries to present in a socially acceptable way, and who resists admitting shortcomings. She noted that Ms. H. had never felt accepted in either the Indigenous or English school settings or

communities. Ms. H.'s difficulties were described as "pervasive", but without the presence of a "clinical syndrome" (p. 35). She tends not to express anger but instead represses negative emotions by avoidance and task-oriented coping. She was described as impulsive and lacking interpersonal sensitivity. This has led to her failure to accept support in parenting her children, and her seeming inability to apply skills and that she has learned from participating in various services.

[48] Ms. Simonse consulted with Robyn Hazard, an Aboriginal counsellor, who had been providing therapy to Ms. H. since December 2018. Ms. Hazard indicated that she had been working with Ms. H. primarily on coping with the Minister's involvement and her father's death. Ms. H. can continue this counselling for as long as necessary. Ms. Hazard indicated that she expects that Ms. H.'s Aboriginal background would make it more difficult "to get understanding from people, but it should not affect the ability to cope with situations" (p. 15).

[49] Ms. Simonse also contacted Liz Benoit, a Support Worker with the "Native Council". Ms. Benoit indicated Ms. H. was involved in several programs through the Council, i.e. CHIP (Child Help Initiative Program), a food security program, and a career life skills program. She felt that Ms. H. had made a lot of

positive changes over the three year period during which they have had contact.

She described Ms. H. as very resilient.

[50] Ms. Simonse also spoke with Katie MacEachern, the wellness manager for the Confederacy of Mainland Mi'kmaq. She has been working with Ms. H. since early 2019 on coping skills and emotional regulation, has assisted her in managing the systems in which she is involved, and has advocated on her behalf. She felt that Ms. H. had come “very far” in learning to cope with her anxiety and emotional regulation. She described Ms. H. as an “excellent” mother (p. 17), but noted she can get overwhelmed easily. She noted that initially Ms. H. had had little insight into the issues that led to her children being taken into care, but she felt that Ms. H. had developed this insight, as well as a support network.

[51] Ms. Simonse recommended that Ms. H. continue therapeutic treatment to address her emotional regulation and underlying pattern of avoidance and repression, focusing on “practical solutions to address life stressors”, building self-esteem, addressing negative behaviour patterns and possibly Dialectical Behaviour Therapy. She indicated that Ms. H. would benefit from ongoing involvement with the Mi'kmaq community and Jordan's Principle supports, as well as parenting support.

[52] Ms. Simonse explained that Ms. H. had not been connecting her behaviours with the traumatic events of her past, and that for treatment to be effective, Ms. H. would need to first explore the link between her experiences and how she builds relationships and solves problems. She indicated that ongoing events establish personality patterns and influence how an individual looks at the world and deals with things, and this can be more difficult to treat than a clinical syndrome.

[53] Ms. Simonse had not been able to review Lana McLean's report prior to completing her (Ms. Simonse's) reports. However, Ms. Simonse indicated she had considered how Ms. H.'s internal language translation (English to Inuk) and her Aboriginal cultural "code" and early experiences impacted Ms. H.'s testing, as well as her view of her relationships and community. She indicated that Ms. H.'s test results aligned with her clinical assessment of Ms. H.

[54] **Lana McLean**, social worker, was qualified to assess individuals with a specialty in race and culturally critical assessment and analysis. She prepared a report dated November 4, 2019 with respect to how cultural considerations are applicable to Ms. H.

[55] Ms. McLean spoke of the need for an assessor to be aware of cultural and racial experience in interpreting test data, and to address validity of results given the person's cultural lens, experiences, and community connections.

[56] She noted that in her early years, Ms. H. as a First Nations person, would have experienced family as a core central value, and would have been taught to live in the present more so than focusing on the past. This would have led to Ms. H. expecting interpersonal conflicts to be resolved within the family or community. This has proven difficult for Ms. H., as she has not always been connected with a First Nations community, and the capacity to have social supports within the local Aboriginal community would be looser than in the North.

[57] Ms. McLean described the impact of "code switching" on Ms. H.'s comprehension of questions posed to her in her mental health assessment. Ms. H. had indicated to her: (p. 5)

I am an Inuk woman. I follow the Northern ways. I still think, feel and speak in my first language Inuktitut, which is the traditional oral language (with several dialects) of Inuit peoples.

[58] Ms. H. noted how this had impacted her testing (at p. 5):

I found the tests hard to understand and the psychologist could see that I was having a hard time. I even had a hard time understanding her at times; she speaks French as her first language and I think she understood I was translating what she was saying in English to my native language. It was frustrating but I really wanted to finish the test. In my culture you are judged not on how you do on the test but that you finished what you were to do. That's what is viewed as success and good character ... I even, at times, struggled with the social worker who kept saying I was overwhelmed. I don't know a word that means overwhelmed so I went along with her. Later I was able to better understand what that word meant and I wasn't overwhelmed over my life, I was tired – I was lacking sleep. I know I need help with the children they don't overwhelm me – I know what they need; I didn't know what I needed.

[Up North] we focus on the present, we don't think about what happened in the past or think into the future about events or conflicts we have with others. In my culture, you talk to the person then move on. Holding onto the past doesn't give that person any space to grow and I am not supposed to stop them from what or who they are to become. I guess that's why a lot of people – professionals think I let people walk over me.

[59] Ms. McLean also noted the impact of interpersonal trauma on Ms. H.

through her mother's experiences.

[60] Ms. McLean reviewed Ms. Simonse's recommendations and found that they were culturally responsive, and that Ms. Simonse was mindful as to the impacts of language challenges & code switching. She noted that Ms. H. presents with resilience. However, she also notes that Ms. H. must continually read her environment and make conscious adaptations to respond. As such, she felt that

Ms. H. needed continued cultural literacy and support, as part of her counselling process.

[61] **Crystal Shanks-Tracey** is a counselling therapist (Candidate), who has been providing counselling to Ms. H. since October 2019 as arranged by Ms. H. through “Jordan’s Principle”. Her report was entered by consent.

[62] Ms. Shanks-Tracey is providing psychoeducation around “therapeutic parenting”, including attachment, responding to a child’s cues and selfcare. She described Ms. H. as engaged and noted that she gives examples of how she puts into practice what she has learned and is reflective on her family and cultural background. She reported that Ms. H. finds this to be challenging (p. 3):

[Ms. H.] states that this can be challenging as she needs to “translate” what she learned growing up, to what she is learning within the culture she now lives in order to find an understanding of what is required in her parenting approach.

[63] **Jennifer Denney-Hazel**, registered psychologist, prepared a Psychological Assessment with respect to Mr. R. on October 9, 2019, which was admitted by consent.

[64] Ms. Denney-Hazel summarized Mr. R.'s personality as having surface affability with a "testy" side which reveals itself to those who have more enduring relationships with him. She notes:

His presence in his current therapeutic situation is likely to be the consequence of difficulties stemming from his inability to sustain peaceful and non-egotistic relationships at work or home. Mr. (R.'s) interpersonal difficulties usually do not derive from hostile or malicious intentions. Rather, they usually stem from his failure to take other's needs into consideration and his air of self-assurance...

[65] Ms. Denney-Hazel recommended that Mr. R. participate in psychotherapy on an ongoing basis.

[66] **Trevor Moores**, counselling therapist, reported that Mr. R. attended two counselling sessions in March 2019, but had not attended or arranged any sessions since that time.

[67] **Beth Roberts**, Family Support Worker, provided an affidavit which was admitted by consent. She reported that Ms. H.'s family support sessions ended in April 2019, after approximately 40 contacts. She described Ms. H. as engaged, but stated (at para 24):

...while it seemed that Ms. (H.) already had knowledge about the topics we were discussing, particularly with respect to the effects of domestic violence in children, characteristics of a healthy relationship,

red flags in a relationship, and being a protective parent, Ms. H. struggled to apply her knowledge as she continued to have contact with Mr. R. during the time I was involved.

[68] She also noted that she had seen Ms. H. interacting with her children and (at para. 25) "... she appeared attentive to their needs including feeding, clothing them, having positive interactions and encouragement, and reading their cues."

[69] Ms. H. acknowledged to Ms. Roberts that her mental health and addictions were having an impact on her parenting.

[70] **Louise Layton** has been the long-term social worker for the family for over one year. She submitted six affidavits dated January 9, 2019 to February 13, 2020. She detailed her communication with both Respondents, which at times has been strained and difficult.

[71] She noted that Mr. R. has not engaged with services except his psychological assessment, and his prior counselling appointments. He has at times made negative reports about Ms. H. He has chosen not to have any supervised access to his children on Agency terms since April 2019, and has regularly been demanding and insulting in his communication with Ms. Layton.

[72] Ms. Layton described information she received relating to the Respondents' contact in January 2019, which resulted in criminal charges for Ms. H.

[73] Ms. Layton also described a medical emergency for the female twin and noted that both Ms. H. and the foster mother spent a lot of time at the IWK with the child, whereas Mr. R. did not arrange to attend.

[74] She also described the Agency's attempt to increase access and to transition the two older children to Ms. H.'s care, including the unsuccessful supervision attempt by Jordan's Principle workers in July and August 2019. After this attempt, and following Ms. Simonse's reports in October and November 2019, the Minister decided to seek permanent care and custody of the children.

[75] Ms. Layton described the Agency's interpretation of Ms. Simonse's report as follows: (at para 7 – 19 of her November 25, 2019 Affidavit):

“Ms. Simonse opined that Ms. (H.) did not meet criteria for any diagnosis but did note that Ms. (H.) had personality traits that would make it difficult for her to have meaningful insight into negative (sic) about herself as this would be distressing to her.

Ms. Simonse indicated that these personality traits likely developed when Ms. (H.) was a child as a result of trauma. Ms. Simonse noted that Ms. (H.) does not have an understanding of healthy boundaries and limits. Ms. Simonse opined that Ms. (H.) would likely present well when she is engaged in services but there would be a low

likelihood that Ms. (H.) would be able to implement what she was learning...

Ms. Simonse indicated that there is no treatment for personality traits, and they are unlikely to change.

[76] In her *viva voce* evidence Ms. Layton described two recent incidents in which she felt Ms. H. had put the children at physical risk (bikes without helmets and hot chocolate preparation). She noted that all four children have a relationship. She admitted there was no evidence of alcohol use by Ms. H. since January 2019, but there was concern regarding overuse of marijuana in the summer of 2019.

[77] Ms. Layton was challenged on her characterization of Ms. H.'s personality traits as "unfixable." She agreed that Ms. McLean's report was received after the Agency had decided to seek permanent care and custody. She also indicated that the Agency considered Ms. Shanks-Tracey's work to essentially be a repeat of the family support work by Beth Roberts.

[78] Ms. Layton summarized access supervisor reports in early December 2019, when Ms. H. appeared to be unable to handle the older two children, or all four children together. Case aides reported that they needed to ask Ms. H. to attend to the children during the two hour visit. They also described difficulties Ms.

H. had in managing the older children's behaviours when similar behaviours were not being noted elsewhere.

[79] Ms. Layton recounted a conversation with Ms. H. in late January 2020 in which she reported that her counselling with Ms. Shanks-Tracey was helping her feel more confident and therefore fewer behavioural concerns were occurring during access. She felt that she and the children were doing "a lot better."

[80] Ms. Layton, on cross-examination agreed that if Ms. H. followed through on Ms. Simonse's recommendations, the only additional concerns would be intimate partner abuse and emotional abuse of the children.

[81] She acknowledged Ms. H. and Mr. R. do not appear to have had contact for almost a year.

[82] Emotional abuse of the children related to Ms. H.'s unkind comments to the second oldest child in which she swore at him and belittled him in August 2019.

[83] **Kathleen Archibald**, social worker, was the initial long-term social worker for the family, until she became the child in care worker for the four children in November 2019. She described various health concerns for the children and how they have been addressed. She noted that the second oldest child has speech delays

and needs to be told things repeatedly. The foster mother questioned whether he might have Fetal Alcohol Spectrum Disorder. Neurological assessments were set up for both older children in February 2020. The oldest child is being seen by Early Intervention, and it was noted that Ms. H. had initiated this service prior to the children coming into care. Ms. Archibald reported that he is now on par with his peers.

[84] Ms. Archibald noted that in November 2019, the older child was acting out at home and school, and that when he saw his sister at school he was clingy with her. He is reported to look forward to visiting his mom. Recently his behaviours in the foster home have improved, and he looks forward to visiting his Mom.

[85] The second oldest child has presented as sad in the foster home and at school. He also looks forward to visits with his mom.

[86] **Shannon MacLeod** is a social worker and the local Adoption Team Supervisor for the Minister. In her affidavit she notes that 29 prospective adoptive homes exist in Nova Scotia, which are willing to accept siblings up to age 10. The Minister prioritizes homes which would take all siblings together. However, if that is not possible, homes which allow “openness”, i.e. sibling

contact will be prioritized. Ms. MacLeod noted that the Agency is only considering third party adoption for the children as neither family members nor the current foster parents have come forward to seek care of the children.

Respondents' Evidence

[87] **Catherine (Katie) MacEachern**, a social worker with the Mainland Mi'kmaq Confederacy, provided an Affidavit and was cross examined. Ms. MacEachern put together a comprehensive proposed support plan which Ms. H. has incorporated as part of her Plan of Care. This includes funding for extensive respite and counselling. She confirmed that Ms. H. and the children can access Jordan's Principle funding as long as needed. She meets with Ms. H. regularly and finds her to be motivated to better herself for her children.

[88] **Ms. H.** provided two affidavits, testified and was cross-examined.

[89] In her December 2018 affidavit, she indicated her relationship with Mr. R. was over. She was intending to participate in a grieving support group, was taking medication to treat depression and anxiety, was receiving culturally appropriate counselling services from Robyn Hazard, and was working with a Family Support Worker and Public Health Nurse.

[90] Ms. H. also filed an Affidavit on February 20, 2020 in which she indicated that she does not intend to involve Mr. R. in the children's lives going forward, as she feels he does not want what is best for the children.

[91] She now has regular visits with her oldest daughter A., and their relationship is close.

[92] She was charged with assault for breaking Mr. R.'s television on January 20, 2019, but testified that the charges were dropped and she paid for the damage.

[93] She has developed an "amazing" relationship with the twin's foster parents who have allowed access in their home and facilitated her attendance at appointments. She indicated they have offered to provide weekend respite for her going forward.

[94] Ms. H. was able to summarize the current and ongoing medical needs and appointments for the children. She felt that her ability to organize, attend and follow health instructions for her children is "not an issue."

[95] Ms. H. expressed concern about the second oldest child's behaviours while in her care. She notes that she has had to make many adjustments, and that "setting boundaries" is something she has been working on successfully with Ms. Shanks-Tracey.

[96] She denied drinking alcohol during her pregnancies, since January 2019.

[97] Ms. H. noted a history of “fear and defensiveness with CPS workers given the history within (the Inuk) culture”.

[98] Ms. H. is seeing Ms. Hazard weekly to “deal with grief and heal from domestic violence,” and to work on emotional regulation.

[99] She also sees Katie MacEachern every two weeks to deal with mental health concerns, family support, navigating various systems, and advocating on her behalf. Ms. MacEachern has helped her develop a Plan of Care for the children. This Plan of Care involves extensive use of services paid for pursuant to the Jordan’s Principle, and addresses drug and alcohol use, domestic violence, parenting and inadequate supervision. She has arranged 4 hours respite on weekdays, and 6 hours on weekends and holidays, to be reviewed in six months and adjusted as necessary. Ms. H. finds Ms. MacEachern’s assistance to be particularly valuable as it is culturally appropriate.

[100] Ms. H. agreed to continue to have no contact with Mr. R., and to abstain from using alcohol and drugs (although in her Affidavit she admits she may use marijuana recreationally on occasion when the children are not in her care).

[101] Ms. H. indicated that she is meeting with Ms. Shanks-Tracey every week or two. They are working on parenting skills designed for her children specifically. She gave an example of a technique she had learned from Ms. Shanks-Tracey which Ms. H. recently used effectively with the second oldest child. She has also been working on self compassion and self care. She finds her current services to be more culturally appropriate than in the past, as her service providers have had the benefit of reviewing Ms. McLean's report, as well as the reports from supervisory Place of Safety staff this past summer.

[102] In her *viva voce* evidence and cross-examination, Ms. H. elaborated on how she is now learning in a culturally aware context. For example, she previously found the concept of rewarding children for good behaviour to be a foreign one, as it is not prevalent in the North where parents and the community expect good behaviour and do not reward it. She indicated she had previously only focussed on the older children's behaviour, without considering the trauma they have been through. She also gave examples of how in the North parenting was more of a community effort and distances were shorter, e.g. no need to strap children into car seats and drive to a park, and if they did need to do so, family and friends would be available to help without asking.

[103] Ms. H. has felt alone parenting four young children with no help from Mr. R. She has been confused and frustrated by Agency requests, and has felt as if they were making her “jump through hoops”. She said Ms. Layton’s response to her questions would often be that she would need to take it “back to her team”. Things would then go unanswered for days, which Ms. H. felt was disrespectful. She said that the workers came into her house like they “ruled” it and made her feel as though they thought she was stupid.

[104] She also felt that the social workers did not communicate with her as they should have, *e.g.* it took them 5 to 7 hours to advise her that her daughter had been airlifted to the I.W.K.

[105] On cross-examination, Ms. H. testified that bad behaviour is often ignored in the North, and a perception of strength is valued in her culture.

[106] She has applied for subsidized daycare at a nearby center and is on income assistance. She has a four-bedroom home with subsidized rent.

[107] Ms. H. proposes using public transit and Jordan’s Principle resources until she can obtain a vehicle to take the children to their appointments. She plans for the twins to attend daycare three days a week, for the two oldest to attend Pre-K and Grade 1 in the fall, and for the second oldest to attend daycare with

the twins until September. She emphasized her commitment to continuing to expose the children to her Inuk culture and language.

LAW

[108] 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;**
- (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 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 view 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.”**

[109] 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.”**

[110] S. 42(3) states that:

Where the Court determines that it is necessary to remove the child from the care of a parent or guardian, the Court shall, before making an order for temporary or permanent care and custody pursuant to clause (d), (e) or (f) of subsection (1), consider whether

(a) it is possible to place the child with a relative, neighbour or other member of the child’s community or extended family with whom the child at the time of being taken into care, had a meaningful relationship pursuant to clause (c) of subsection (1), with the consent of the relative or other person;

[111] S. 42(4) provides that:

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

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

[113] The Court must be persuaded on a balance of probabilities that placement of the children with Ms. H. 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 NSSC 336, as follows:

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.

[114] The concept of substantial risk of emotional abuse is addressed in Section 22(2)(g) of the *Act*, which states that a child is in need of protective services where:

(g) there is substantial risk that the child will suffer emotional abuse and the parent or guardian does not provide, refuses or is unavailable or unable to consent to, or fails to co-operate with the provision of, services or treatment to remedy or alleviate the abuse;

[115] Section 3(1) (la) of the *Act* defines emotional abuse as follows:

(la) “emotional abuse” means acts that seriously interfere with a child’s healthy development, emotional functioning and attachment to others such as (i) rejection, (ii) isolation, including depriving the child from normal social interactions, (iii) deprivation of affection or cognitive stimulation, (iv) inappropriate criticism, humiliation or expectations of or threats or accusations toward the child, or (v) any other similar acts;

[116] Justice Forgeron of the NSSC Family Division recently considered

substantial risk of emotional abuse in *Minister of Community Services v.*

T.L., 2019 NSCC 182, at paras. 22 and 23:

[22] A finding of a substantial risk of emotional abuse is not one that will be entered lightly. It involves both objective and subjective elements. The parental conduct must be viewed objectively to prove actions that seriously interfere with a child. The parental conduct must also be viewed subjectively based on the impact that the conduct has or will likely have on the specific child.

[23] In the end, the Minister must prove that there is a substantial risk that the father will seriously interfere with three aspects of the daughter's life – that involving her healthy development, emotional functioning and attachment to others. In addition, for a finding of substantial risk, the Minister must also prove that the father will not or cannot participate in services to remedy or alleviate the abuse.

Analysis

[117] Ms. H. has a 7-year history with child protection, stemming primarily from incidents of domestic violence with Mr. R. There have also been concerns regarding Ms. H.'s mental health, substance use and judgment.

[118] The Minister initially brought this application seeking a finding under Section 22(2) of the *Act*, in particular subsection (b) risk of physical harm; (f) emotional abuse; (g) risk of emotional abuse; (i) exposure to domestic violence; (j) neglect; and (k) substantial risk of neglect.

[119] Essentially, the Minister's position is that Ms. H. has participated in numerous services in the past, has not applied what she has learned, and has not followed direction or agreements. They do not believe she has progressed sufficiently to prevent her from feeling stressed, becoming overwhelmed emotionally, taking it out on her kids and blaming others.

[120] I agree that this has been the pattern with Ms. H. to and including August 2019. As late as December 2019 she continued to be unable to consistently manage all four or even the two oldest children during access.

[121] Ms. McLean's cultural assessment and Ms. Simonse's mental health assessment have provided valuable context and a road map for Ms. Hazard and Ms. Shanks-Tracey to effectively treat and direct Ms. H. These services have been arranged by Ms. H. and her Aboriginal support workers and are funded on a long-term basis through Jordan's Principle funding.

[122] Ms. H. appears to be learning specific techniques in a hands-on way from Ms. Shanks-Tracey, and has committed to attending over 100 such sessions.

[123] I accept that Ms. H. is committed to these services. In the past, the missing link between knowledge and behavioural change appears to have been the lack of a cultural lens and context. This now has been introduced, and I accept that

it is making and will continue to make a significant impact on Ms. H.'s ability to parent her children.

[124] The real question here is whether Ms. H. will have progressed sufficiently by the end of the statutory timeline (April 24, 2020) so as to allow her children to be safely returned to her.

[125] In order to assess this, I note as follows:

- The Minister's initial concerns related primarily to domestic violence.

I find that this is not currently a significant risk to the children. Ms. H. has not had contact with Mr. R. since May 2019. She does not have a history of domestic violence before Mr. R., and now has a significant support network.

- The Minister's concerns regarding physical care are not significant.

The perceived lack of supervision while riding bikes or making hot chocolate was adequately addressed by Ms. H. in her testimony. The Minister did not have significant concerns relating to physical care of the children prior to this Application. Beth Roberts noted that as of April 2019 Ms. H was attentive to the children's needs.

- The Minister has not provided evidence of significant neglect or risk of neglect. It is clear from Ms. H.'s evidence and that of the professionals who work with her that she is intelligent and resilient. She has attended almost all access and medical appointments for the children which she was permitted to attend in the past year and a half. She has weathered and has come a long way towards recovering from a violent, negative relationship which took her attention off her children. She is still grieving her father's death, but she has built a new support network for herself and the children. She understands the children's medical needs, and is capable of organizing their appointments, and obtaining necessary services and transportation for them.
- Ms. H.'s yelling and verbal abuse of the second oldest child in August 2019 is associated with her emotional regulation and her need to learn parenting skills in a way that resonates with her. I do not accept that Ms. H. is unteachable or that she cannot apply what she learns. Ms. Simonse's evidence does not support this conclusion. Rather, Ms. Simonse described Ms. H. as having "pervasive traits" and learned coping mechanisms throughout her formative years

which are linked to trauma. These will be difficult to treat. However, Ms. H. is currently following Ms. Simonse's recommendations. She is engaged and committed for the long-term. This mitigates any risk to the children.

[126] Ms. H.'s behaviour in August 2019 may amount to "verbal abuse" as identified by Ms. Layton. It was not nice or kind to say the things Ms. H. said in frustration; Ms. H. has admitted this. However, her behaviour does not meet the definition of "emotional abuse" as set out in Section 22(2)(1a) in that there is no evidence that the conduct seriously interfered with the child's healthy development or attachment to others.

[127] I accept that historically, Ms. H. has not consistently applied what she has learned. Her behaviour in the summer of 2019 was concerning and disappointing to those who made extraordinary efforts to ensure she could safely parent her children. She now says it was too early, and she is right. The Court is concerned that Ms. H. did not have insight into her readiness to parent in July 2019. However, this does not take away from the real progress she appears to have made in recent months.

[128] Ms. H. has a good rapport with the children and was noted by Ms. Roberts in April 2019 to be attentive to their needs and to have positive interactions with them.

[129] The older children look forward to visits with their mother, and all four children are noted to have a relationship.

[130] Ms. H. has now recognized that the cultural values with which she was raised, *i.e.* present focus, family reliance, valuing the perception of strength have led to alienating behaviour and to her rejection of advice and services in the past. Her formative years and mothering example are Inuk based, and I accept that she is now learning appropriate parenting in her current culture in that context. Ms. H. has learned many skills in past services. Ms. Shanks-Tracey is now helping her to apply them, and to learn skills and approaches uniquely suited to her children.

[131] While the Court is concerned that Ms. H. has never cared for all four children for any length of time, and has been easily overwhelmed and has made poor decisions when she has had the opportunity to care for them, I note that this occurred prior to her current supports and in a context when Ms. H. perceived that it was necessary to take a defensive approach with the Agency.

[132] The evidence I have before me supports the conclusion that Ms. H. has progressed significantly in recent months, in her self-awareness as a person and as a parent. In particular, her work with Ms. Shanks-Tracey appears to have improved her insight into her children's emotional needs and behaviours, and her struggles to manage those behaviours at times. I find that she has progressed sufficiently and has agreed to continue voluntarily with services so to be able to adequately parent the children without significant risk of emotional abuse.

[133] I find that it is in the best interests of these children that they remain together in their mother's care. Ms. H. has been the primary caregiver to the two older children. She has been a constant in the lives of all four children and has been committed to their care. She has experienced significant displacement as a biracial person, and as such is well placed and committed to helping her children find their place and experience and appreciate their Aboriginal heritage.

[134] The Minister has therefore not proven on the balance of probabilities that the children would remain at significant risk of harm as defined by s. 22(2) of the *Act*. The children shall be returned to the care of Ms. H. on or before April 24, 2020, on a date or dates to be mutually.

[135] I will entertain an application by Ms. H. pursuant to the *Parenting and Support Act* for sole custody and no access to Mr. R. as well as a notice provision to the Minister should either Respondent seek to vary his access in the future.

Jean Dewolfe, JFC