FAMILY COURT OF NOVA SCOTIA
Citation: *M.S. v. J.M.*, 2020 NSFC 16

Date: 20190816
Docket: FPICPSA-111922
Registry: Pictou

Between:

M.S. and R.S.

Applicant

v.

J.M., M.M., Child and Youth Family Services, NL

Respondents

DECISION

By the Court:

Judge:	The Honourable Judge Timothy G. Daley
Heard	August 13, 2019, in Pictou, Nova Scotia
Oral Decision	August 15, 2019
Counsel:	Ellen Burke, for M.S. and R.S. Allison Kouzovnikov, for J.M. Shawn MacLaughlin, for M.M. Nikita Sheaves on behalf of Heidi Marshall for the Manager of Child and Youth Family Services Newfoundland

Introduction

[1] This decision is about two children, D.M. who is about to turn 6 years old, and S.M. who is 3 1/2 years old, and what is in their best interests. Specifically, I must determine whether I can and should find that Nova Scotia is the appropriate jurisdiction and forum for determining matters of custody and parenting arrangements for these children.

[2] This matter comes before me as an emergency application by the children's paternal grandparents, M.S. and R.S. I note that R.S. is not biologically related to these children but has acted as their grandfather in all respects and for the purpose of this decision I will refer to him as a grandparent or grandfather. They seek an order granting them leave to apply for custody and care of the children and an interim order granting them custody and care of the children in Nova Scotia pending the outcome of a further final hearing respecting the children's best interests. The children's father, J.M., supports his parents' plan and application.

[3] The children's mother, M.M., resides in Labrador and asks that the court decline to accept jurisdiction in the matter so that the issue of the children's custodial and parenting arrangements may be determined by a court in Labrador.

[4] The circumstances which give rise to this application are quite unusual. Both children were in their mother's care in Labrador when the Manager of

Children and Youth Services in that Province applied to the Provincial Court of Newfoundland under the *Children and Youth Care and Protection Act* for an order placing the children in the custody of the Manager and that order was granted August 19, 2016.

[5] Under that order, the Manager placed the children with the paternal grandparents in Nova Scotia. It is important to note that this order in doing so, continued custody with the Manager and the placement of the children with the grandparents in Nova Scotia, was under a significant other foster care arrangement. Thus, the Manager retained custody of the children throughout the proceeding.

[6] The result is that D.M. has spent over half of his life and S.M. almost the entirety of her life with the grandparents in Nova Scotia while the child protection proceedings continued in Labrador.

[7] It is also relevant that the grandparents and father at one time resided in Wabush, Labrador, and relocated to Nova Scotia some years ago. The mother has lived and remains in Labrador throughout.

[8] While there is not significant evidence before this court respecting the services offered to and entered into by the mother in the child protection

proceedings, it is my understanding that the proceedings have been ongoing and services have been provided.

[9] As noted, there is little evidence of the general circumstances of the child protection proceedings in Labrador before this court but there is some indication in the evidence in the form of copies of applications by the Manager to the Provincial Court seeking continuing orders which indicate the nature of the risks present.

[10] In January of 2014, D.M. was removed from his parents' care based on concerns of domestic violence, substance abuse and poor household conditions. The children were placed in foster care at that time. They were returned to their parents' care in February of 2014 on conditions requiring cooperation with the Manager and requiring that they enter into services to address the protection concerns.

[11] Concerns continued through 2014 and 2015 with ongoing referrals respecting fighting between the parents, alcohol abuse, possible drug abuse and one incident of violence in which the mother is alleged to have hit the father in the head with a beer bottle which caused blood to be spread around the home. The mother appeared to be impaired and D.M. was in the home at the time.

[12] In late 2015, D.M. was taken by the Manager and placed with the paternal grandparents in Wabush in a foster care arrangement. The parents had supervised access and had to enter into services and not expose the children to anyone under the influence of alcohol or illegal drugs. The mother was to ensure that D.M. was not in the presence of one J.K.

[13] S.M. was born in December of 2015.

[14] The concerns continued for both parents.

[15] The matter culminated with the Manager's application seeking the current order granted in August of 2016. This resulted from an incident where a worker entered the home and observed D.M. locked in the bedroom alone, a diaper full of feces next to his head, naked and smelling of urine. The child at the time was in the care of J.K. and the mother was not home. D.M. was removed at that time and place in the care of the Manager and the application went forward.

[16] At this stage of the proceedings, the evidence is sparse with respect to the progress of the mother or the father since the intervention of the Manager in 2016. What is clear is that the Manager now wishes to discontinue the proceedings in Labrador on the basis that the mother has addressed the protection concerns sufficiently and the Manager no longer needs to be involved with her. The next

appearance in Wabush before the Provincial Court on the matter is scheduled for August 19, 2019.

[17] There are been several interjurisdictional judicial conferences in this matter between myself and Judge Trahey of the Provincial Court in Wabush who has been dealing with this matter since its beginning. Counsel and parties have been involved in these conferences and there has been ongoing discussion regarding the issue of jurisdiction in those conferences. Unfortunately, nothing has been resolved.

[18] Counsel and parties were reminded that, if jurisdiction was found to be with the court in Labrador, there was no active application by the parents or grandparents before the court in Wabush dealing with custody and parenting arrangements. This might mean that, if the Manager discontinued the proceedings on August 19, 2019, the children would have to be returned to the mother forthwith. Since then, the mother has made application on August 5, 2019 seeking that the children be placed in her custody. It is my understanding that under the Newfoundland and Labrador child protection legislation, an application for custody at the completion of a child protection matter may be heard under the *Children, Youth and Families Act* and determined by the court. This is the order

the mother now seeks. Neither the father nor the grandparents have made a similar application in Labrador at this time.

[19] The result of all of this is that there are three ongoing proceedings in two provinces. The grandparents have an application under the *Parenting and Support Act* before this court in Nova Scotia. The mother has an application before the court in Wabush and there is the ongoing child protection proceeding before the Provincial Court in Wabush which may be discontinued soon. It therefore becomes necessary for this Court to decide whether it should assume jurisdiction in Nova Scotia for these children.

The Law and Evidence

[20] Before reviewing the evidence, it will be helpful to set out the applicable law regarding determination of jurisdiction. I note, I had previously summarized this law in my decisions in *A.J. v. K.M.,* 2015 NSFC 19, and *S.M. v. M.S.*, 2017 NSFC 28.

[21] The first of the issues to be determined by the court is whether I can find that Nova Scotia has jurisdiction in this matter. Under the *Parenting and Support Act* there is no specific direction on determination of jurisdiction in such circumstances, but the *Act* does indicate at Section 18(5):

> (5) In any proceeding under this Act concerning custody, parenting arrangements, parenting time, contact time or interaction in relation to a child, the court shall give paramount consideration to the best interests of the child.

[22] I therefore remind myself throughout this decision and throughout these proceedings that it is the best interests of children and not the interests of their parents or grandparents that must be given paramountcy at all times.

[23] To the question of whether I can find jurisdiction in Nova Scotia, one of the leading decisions in the matter is that of *Yonis v. Garado,* 2011 NSSC 110, a decision of Justice Jollimore of the Nova Scotia Supreme Court Family Division, in which she discusses a circumstance somewhat analogous to this matter. In paragraph 6 of that decision, she finds as follows:

> 6 In *Bouch v. Penny*, 2009 NSCA 80 (N.S.C.A.), Justice Saunders, with whom Justices Rosco and Oland concurred, approved of the two-step analysis Justice Wright preformed in deciding the application at first instance. Justice Wright said, at paragraph 40 of his decision in *Penny v. Bouch*, 2008 NSSC 378 (N.S.S.C.), that where there's a dispute over assumed jurisdiction, the *Court Jurisdiction and Proceedings Transfer Act* requires I must first determine whether I can assume jurisdiction, given the relationship between the subject matter of the case, the parties and the forum. If that legal test is met and I can assume jurisdiction, I must then consider whether I ought to assume jurisdiction. He said this means considering the discretionary doctrine of *forum non conveniens*. There may be more than one forum capable of assuming jurisdiction and I may decline to exercise jurisdiction because there is another, more appropriate, forum.

[24] From this it is clear that I must apply a two-part test in determining jurisdiction. First, I must determine if I <u>could</u> assume jurisdiction. If I find that I could, I must next determine if I <u>should</u> assume jurisdiction.

Step One – Could I Assume Jurisdiction?

[25] To determine whether I could assume jurisdiction, Justice Jollimore refers to the *Court Jurisdiction and Proceedings Transfer Act*, 2003 (2d Sess.), c. 2, s. 1, which assists the court in its analysis of any matter such as this. Section 4 of the *Act* says:

> 4 A court has territorial competence in a proceeding that is brought against a person only if
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> (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counter-claim;
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> (b) during the course of the proceeding that person submits to the court's jurisdiction;
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> (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding;
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> (d) that person is ordinarily resident in the Province at the time of the commencement of the proceeding; or
>
> (e) there is a real and substantial connection between the Province and the facts on which the proceeding against that person is based.

[26] In this matter, subsection (a) is not applicable.

[27] I find that subsection (c) is not applicable as there was never an agreement by the mother that Nova Scotia was to have jurisdiction in the proceeding.

[28] Similarly, subsection (d) is not applicable as the mother was not ordinarily a resident of Nova Scotia either at the time of the commencement of the proceeding or at any other time since.

[29] The grandparents and father have argued that subsection (b) is applicable because the mother submitted to the Court's jurisdiction. They say that the fact that the mother did not exercise the access time with the children in Nova Scotia as permitted by the order of the Provincial Court in Wabush suggests that she did submit to the Nova Scotia jurisdiction. Under that order, the mother was entitled to travel to Nova Scotia at the expense of the Manager every 4 to 6 weeks to see the children and only did so five times over the course of the approximately three years the children have been with the grandparents in Nova Scotia. They say that this is clear evidence of her submitting to the jurisdiction of Nova Scotia.

[30] I cannot agree. While it is troubling that the mother did not avail herself of the opportunity to spend a great deal more time with the children, perhaps up to 30 or more visits over three years, I do not find that this is sufficient to confirm on the balance of probabilities that she submitted to the jurisdiction being in Nova Scotia.

[31] She resided throughout this time in Labrador. The ongoing proceedings were all under the jurisdiction of the Provincial Court in Wabush. She did not file an application in Nova Scotia under any legislation nor formally consent to the jurisdiction as noted earlier. I cannot find that the mere absence of visits, to which she was entitled, is sufficient to establish, on a balance of probabilities, that she submitted to the jurisdiction in Nova Scotia. There simply must be more to confirm this factor.

[32] It is therefore the question of real and substantial connection with the Province that must be addressed in this analysis.

[33] Section 11 of the same *Act* provides some guidance with respect to substantial connection. It says, in part:

> 11 Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between the Province and the facts on which a proceeding is based, a real and substantial connection between the Province and those facts is presumed to exist if the proceeding…

[34] And then the legislation goes on to list 12 circumstances under which it might be presumed that a matter has a real and substantial connection to the Province. I find none of those applicable here. However, and to repeat, s.11 begins with the phrase:

> Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between the Province and the facts on which a proceeding is based…

[35] This quite clearly indicates that though there are 12 examples listed in the *Act*, those are not a closed class or group, and if the party can establish other circumstances of a real and substantial connection it may satisfy the court.

[36] This section has been interpreted and applied in the case of *Detcheverry v. Herritt*, 2013 NSSC 315, a decision of Associate Chief Justice O'Neil of the Nova Scotia Supreme Court Family Division.

[37] In paragraph 56 of that decision, Justice O'Neil analyzed s.11 of the *Act*, aforesaid, and found as follows:

> 56 But for s.11(a), it is noteworthy that none of these presumptions appear to be directly applicable to family proceedings. The statute does not give a comprehensive guide, encompassing all common law principles and presumptions including those that are long established in the area of family law. We must look to the common law for more guidance in defining a real and substantial connection.
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> 57 Justice Saunders summarized the considerations at common law that assist in determining whether "a real and substantial connection exists" as that phrase is used in section 4(e) of the "*CJPTA"*. He wrote the following in *Bouch v. Penny*, 2009 NSCA 80:
>
> > 51 Accordingly, I reject the suggestion that considerations of fairness have no place in the inquiry into the existence of a real and substantial connection, and are only to be weighed during the application of the discretionary forum non conveniens doctrine. In my respectful view, such a prohibition would introduce an unnecessary and unrealistic rigidity to a test that is clearly designed to be flexible. To impose such a constraint

would prevent a judge's assessment of the totality of the evidence when deciding whether the circumstances made it proper to accept jurisdiction over the action as framed by the plaintiff.

52 From the cases he reviewed, Justice Sharpe identified a list of emerging factors which would be relevant in assessing these jurisdictional questions. Sharpe, J.A. offered a list of eight factors:

1. The connection between the forum and the plaintiff's claim
2. The connection between the forum and the defendant
3. Unfairness to the defendant in assuming jurisdiction
4. Unfairness to the plaintiff in not assuming jurisdiction
5. The involvement of other parties to the suit
6. The court's willingness to recognize and enforce an extra-provincial judgment rendered on the same jurisdictional basis
7. Whether the case is interprovincial or international in nature
8. Comity and the standards of jurisdiction, recognition and enforcement prevailing elsewhere

[38] Justice Saunders in *Penny, supra*, goes on to say in Paragraph 53 of that decision:

53 These were the same eight factors considered by Justice Wright in satisfying himself that Nova Scotia had acquired a real and substantial connection to the present litigation. I would endorse this list as a useful series of criteria with which to judge such matter, while at the same time observing that the list is by no means exhaustive. It offers a roadmap to guide judges hearing such applications. To borrow the language of s.11 of the Act, the list of factors serves to complement "[w]ithout limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection…" I would conclude on this point by endorsing the observations of Justice Sharpe in introducing the factors he identified:

> 75 It is apparent from Morgaurd, Hunt and subsequent case law that it is not possible to reduce the real and substantial connection test to a fixed formula. A considerable measure of judgment is required in assessing whether the real and substantial connection test has been met on the facts of a given case. Flexibility is therefore important.
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> 76 But clarity and certainty are also important. As such, it is useful to identify the factors emerging from the case law that are relevant in assessing whether a court should assume jurisdiction against an out-of-province defendant on the basis of damage sustained in Ontario as a result of a tort committed elsewhere. No factor is determinative…

[39] Although that decision related to a tort damage claim, it is clearly applicable in this circumstance.

[40] I also note that the issue of domicile is important. I note that in *Yonis v. Garado, supra,* Justice Jollimore found at paragraph 11:

> Domicile refers to the children's permanent home, the place to which they'd return from an absence.

[41] Applying the list of eight factors set out above, I find it is clear that there is a real and substantial connection between Nova Scotia and the present litigation brought by the grandparents. There is no doubt that there is a connection between Nova Scotia and the grandparents' and father's claims for custody. Each of them resides in Nova Scotia and has been here for several years. Likewise, the children have been in the care of the grandparents for approximately 3 years and have resided during the entire time in Nova Scotia with the grandparents. Evidence of

that connection to the jurisdiction and the experiences of the children and grandparents and father in Nova Scotia is found here.

[42] On the other hand, there is very little connection between Nova Scotia and the mother. She has never resided here, has only traveled here for visits with the children on five occasions and resides in Wabush. It is in Labrador that she obtained services and worked with the Manager. Her connection to Nova Scotia is found solely in the fact that her children reside here under the order of the Provincial Court in Wabush.

[43] Respecting fairness to the mother in assuming jurisdiction in Nova Scotia, it is precisely the same as the unfairness to the grandparents and father in denying jurisdiction in Nova Scotia. There is substantial evidence to be brought in both jurisdictions respecting the best interests of the children.

[44] In the case of the mother, the children resided with her in Labrador until they relocated to Nova Scotia. She has resided there over the entire time of the Manager's involvement. The evidence of her progress and the services she has obtained, as well as the evidence of the workers and other Manager employees that may have had contact with her, is to be found in Labrador. For her to call that evidence in Nova Scotia, if a Nova Scotia court hears the matter, would create substantial logistical challenges. These can be mitigated somewhat by the use of

video connection for taking of the evidence, but cannot be entirely eliminated. This is particularly so in assessing issues of credibility, which are best done by having the witness in the courtroom.

[45] On the other hand, there is substantial evidence to be to be brought in Nova Scotia respecting the grandparents, the father, and the children and their experience in this Province. It is clear that evidence would come from the grandfather, grandmother and father, as well as from other family, friends, doctors and any other service providers that may have had interaction and worked with the children during that time. The same challenge in bringing that evidence should the matter be heard in Labrador still arises.

[46] Put simply, there is substantial and material evidence to be brought in both Provinces that would clearly go to the question of the best interests of the children.

[47] Respecting the final three factors, there is no doubt that the courts in Newfoundland and Labrador and Nova Scotia will recognize and enforce each other's orders, and there is legislation in place to permit this to occur without much delay. The fact that this case is interprovincial as opposed to international simplifies matters and allows for the hearing to progress in either jurisdiction with minimal delay or problem and, again, enforcement of orders should not be an issue in this case.

[48] Finally, I find that there is comity and common standards between the jurisdictions and the law. The test of best interests of the children applies in both Nova Scotia and Newfoundland and Labrador and I have no concerns respecting that issue.

[49] Having considered these factors, I am also mindful that there was no fixed formula in determining the question of real and substantial connection. I consider the question of domicile and find that the children's permanent home is somewhat indeterminate currently. If the children travelled now they would certainly return to the care of the grandparents, that is because of an order of the Provincial Court in Wabush. Prior to that order, their domicile would certainly be in Wabush with their mother. That said, I do not find it necessary to determine the children's domicile in making the finding respecting whether I could assume jurisdiction in the matter.

[50] Taking into account all of these factors and the evidence in support of each, and weighing all the circumstances, I find that I could assume jurisdiction over this proceeding for these children.

Step Two – Should I Assume Jurisdiction?

[51] To the second part of the test of whether I should find that Nova Scotia has jurisdiction in the matter, the *Act* requires me to consider under s.12(1) the following:

> 12 (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.
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> (2) A court, in deciding the question of whether it or a court outside the Province is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
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> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum;
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> (b) the law to be applied to issues in the proceeding;
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> (c) the desirability of avoiding multiplicity of legal proceedings;
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> (d) the desirability of avoiding conflicting decisions in different courts;
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> (e) the enforcement of an eventual judgment; and
>
> (f) the fair and efficient working of the Canadian legal system as a whole.

[52] With respect to certain of these requirements, they can be dealt with quickly. Respecting enforcement of an eventual judgment in Canada, there are various reciprocating statutes that permit the registering and enforcement of judgments for custody, parenting time and support. Nova Scotia and Newfoundland and Labrador are reciprocating jurisdictions and have legislation to permit this. As a result,

whichever jurisdiction determines the matter, the law will permit the enforcement of judgments in either jurisdiction.

[53] I am satisfied that the law to be applied to the issues in the proceedings is substantially similar between Nova Scotia and Newfoundland and Labrador, in that the paramount consideration is always the best interests of the child. I am not concerned that there would be such a substantial difference in law that it should come into the consideration of this Court in deciding whether to accept or decline jurisdiction.

[54] Respecting the other factors, I have already commented on the comparative convenience and expense for the parties and the witnesses in litigating in either jurisdiction. The grandparents and father have significant material evidence to bring before the Court, all of which arises in Nova Scotia. It covers the majority of these children's lives, particularly S.M. The children have not been to Labrador since their placement with the grandparents approximately three years ago.

[55] On the other hand, there seems little dispute that the children have been extremely well cared for by the grandparents in Nova Scotia and have done well here. There may be ongoing concerns respecting the father and whether he has fully addressed the protection concerns that arose in Wabush. That said, nothing has been placed before the court to suggest that there would be a serious contest on

the evidence that, in general, would demonstrate that the children are well cared for by the grandparents and well supported within the community in Nova Scotia.

[56] Likewise, the mother has substantial evidence to call that originates in Labrador. This is where she has lived both before and after the children were placed in the custody of the Manager. Whatever services and support she has received over the last number of years have been provided to her in Labrador. The workers employed by the Manager with whom she has interacted and all of the supports that she has received are there. It would be a tremendous inconvenience to her and them if Nova Scotia were to take jurisdiction.

[57] On this issue, it is very clear to me on the evidence and submissions made in this matter that one of the most important areas for examination by a court in either jurisdiction is the progress made by the mother, if any, in addressing the protection concerns, her current status, her ability to parent these children and any risks that may still be present if custody was awarded to her.

[58] Counsel for the grandparents and father have rightly argued that the children have spent most of their lives in Nova Scotia and the mother has only been here five out of over 30 opportunities she had to visit. They note that evidence of her parenting and interaction with the children can only be assessed based on the observations made during her supervised parenting time here. I agree that this is

important and material evidence. However, the bulk of the evidence respecting the mother's current status, progress and risks, if any, that exist today are to be found in the evidence of witnesses who reside in Labrador. I find this to be the most significant factor in determining where jurisdiction should be found.

[59] I also consider that we should seek to avoid a multiplicity of legal proceedings. There is the current application before this court under the *Parenting and Support Act* by the grandparents and supported by the father. There are the ongoing child protection proceedings in Labrador and the recent application in Labrador by the mother seeking custody of the children. This Court must be mindful to avoid, where possible, such multiplicity of proceedings in order to avoid the risk of conflicting orders, increased cost to parties as they pursue proceedings in both jurisdictions and the difficulty of enforcing potentially conflicting orders that might arise from concurrent proceedings.

[60] I am also mindful of the argument made by the grandparents and father that the children are now domiciled in Nova Scotia and that this is a relevant and material circumstance to consider in deciding the issue of jurisdiction. Considering this, I note the decision of of Justice Campbell in *S. v. D.*, 2004 NSSF 18, at paragraph 7, where he wrote:

> There is jurisdiction in the province where the child was taken because of the presence and existence of the child. There is also jurisdiction in the departing province by virtue of the fact that that province had been the child's habitual residence. … In light of that dual jurisdiction, it is the policy of most Courts as a matter of general rule that the receiving province would decline to use its jurisdiction in favour of the jurisdiction of the province of habitual residence with which the child has the most substantial connection. The main reason for this policy is to discourage the clandestine removal, whether it amounts to kidnapping or not, of children from one province to the other.

[61] In this case, however, the question of habitual residence is not as straightforward as one might hope. There is no issue of kidnapping or clandestine removal. There is an order from the Provincial Court in Wabush placing the children in the custody of the Manager and then placing the children in Nova Scotia with the grandparents. The grandparents do not have custody of the children. The Manager does. The mother, at best, acquiesced to this placement in order to avoid the children going into foster care in Labrador with strangers. This results in the children residing in Nova Scotia without an order of custody with the grandparents. Because of this, I am reluctant to make the finding that Nova Scotia is the children's habitual residence, but I am prepared to find that they do have a substantial connection to this Province.

[62] Thus, I return to the question of where the most relevant evidence resides for consideration by a court. I find that to be the evidence of the mother's child protection history, the proceedings since the first order was granted by the Provincial Court in Labrador and evidence of the services provided to and progress

made by the mother, if any, since that order was granted. All that evidence is in Labrador. As I find it is the most relevant evidence, I decline to assume jurisdiction over this matter for the ultimate disposition of the custodial and parenting arrangements for the children.

[63] That said, I acknowledge that the grandparents or father may yet file an application in Labrador, which they would, no doubt, wish to do so. They have made clear that they have been reluctant to do so for fear of being found to attorn to the jurisdiction of Newfoundland and Labrador in those proceedings and have chosen to proceed only in Nova Scotia. While this is a risk and strategic decision that they have taken, I am not critical of them for taking this approach. They have been forthright and pursued their application in Nova Scotia thoroughly from the first day and there is nothing in their conduct that suggests that they have done so for anything other than legitimate reasons as described.

[64] Given the urgent circumstances driven by the scheduling of the next stage of the proceedings in Labrador which will occur within the next few days, and to ensure that the court in Labrador has the opportunity to assess all of the evidence of the best interests of the children before or after the termination of the Manager's involvement, I am prepared to grant an interim order granting leave to the grandparents to apply for custody, placing the children in the interim custody and

primary care of the grandparents in Nova Scotia until such time as the Court in Wabush has had an opportunity to make a determination respecting the long term custody and parenting arrangements in the best interests of the children.

[65] In granting leave to apply for custody to the grandparents, I am mindful of the provisions of the *Parenting and Support Act* and the case law including the decisions in *Purcell v. Purcell*, 2017 NSSC 253 and *Spence v. Stillwell*, 2017 NSSC 152.

[66] I am issuing this interim order to avoid a circumstance where the Manager terminates its involvement and there is either no order in place respecting the custodial and parenting arrangements or the grandparents and father have not had opportunity to make representations to the Court in Wabush.

[67] I am also doing this by taking a child-centric approach. I am concerned that the removal of these children from Nova Scotia to Labrador before a hearing on their best interests is complete and before the grandparents and father are heard on the matter in Labrador may not be in their best interests. The children might be relocated back to Labrador into their mother's custody only to be returned to Nova Scotia later into their grandparents' custody. I find this would likely be very difficult for them and it is preferable to have the determination of the custodial and parenting arrangements made first before any such moves occur. This is

particularly important for the older of the two children who might face multiple changes in schools and other friendships and arrangements as a result.

[68] I will, of course, defer to the Provincial Court in Wabush in determining how it wishes to proceed and when it wishes to issue either an interim or final order respecting custody and parenting arrangements. When that Court does so, I will relinquish the interim jurisdiction of this Court to the appropriate court in Newfoundland and Labrador.

Daley, J.