

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Minister of Community Services v. KP, DB, and LB, SB*, 2023 NSSC 393

Date: 20231207

Docket: *SFTCFSA-126014*

Registry: Truro

Between:

Minister of Community Services

Applicant

v.

KP and DB

Respondents

and

LB and SB

Third Parties

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Judge: The Honourable Justice Daniel W. Ingersoll

Heard: November 6, 2023, in Truro, Nova Scotia
November 7, 2023, in Truro, Nova Scotia

Written Release: December 7, 2023

Summary: Minister's motion for Permanent Care and Custody of eight-year-old child dismissed. Child's placement with Great-grandparents was a less intrusive alternative to Permanent Care and Custody and in the child's best interests. Great-grandparents granted primary care and decision making.

Key Words: Child Protection, Permanent Care and Custody, Less Intrusive Alternative, Parenting and Support Order

Legislation: *Children and Family Services Act*, S.N.S. 1990, c.5

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Counsel: Cherie Wheeler McLeod, counsel for the Minister
KP, self-represented, not participating
DB, self-represented, not participating
Jennifer Anderson, counsel for LB and SB

By the Court:

1 Introduction

[1] The Minister seeks an order placing C, who is eight years old, in their permanent care and custody.

[2] LB and SB, C's great grandparents, want C placed in their care pursuant to an order under the *Parenting and Support Act* R.S.N.S., 1989, C. 160 (the PSA). They say that placing C with them is in her best interests, is less intrusive than permanent care and is keeping with the *Children and Family Services Act*. S.N.S. 1990, c. 5 (the CFSA) purpose of promoting the integrity of the family.

[3] The Minister says that LB and SB's plan for C's care is not in her best interests as it lacks stability and does not meet the criteria of being sound, sensible, workable, and well conceived with a basis in fact.

[4] C's parents, KP and DB, did not put forward a plan to have C returned to their care.

[5] The issues that I must resolve are:

1. Whether C remains in need of protective services within the meaning of Section 22(2) of the CFSA.

2. Whether C's placement with LB and SB is the least intrusive alternative to permanent care that is in her best interests.

2 Does C Remain in Need of Protective Services Within the Meaning of Section 22(2) of the CFSA?

[6] I must first decide if C remains a child in need of protective services. I must consider if the circumstances that first warranted the Minister's involvement continue to exist and whether other circumstances warranting a protection finding have arisen since that time.

[7] The Minister submits that C remains in need of protective services within the meaning of Section 22(2) of the CFSA.

[8] The Minister bears the burden of proving on a balance of probabilities that C continues to be a child in need of protection (*Nova Scotia (Community Services) v. CKZ*, 2016 NSCA 61, paragraph 53 and *Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)*, [1994] S.C.R. 165 page 194). In determining whether this burden has been met I must consider the need of the child and the capacity of the parents to meet her needs (*Nova Scotia (Minister of Community Services) v. V.A.H.*, 2019 NSCA 72) but I must give paramount consideration to the child's best interests (CFSA Section 2(2)).

[9] In this case, the Minister relies on CFSA subsections 22(2) (b), (f), (g), and (i) as the grounds for the protection finding. Grounds 22(2)(b) and (g) are based on a substantial risk. The CFSA defines “substantial risk” as meaning a “... a real chance of danger that is apparent on the evidence.” (Section 22(1)). The Minister need only prove that there is a real chance that future physical harm or emotional abuse will occur, and not that future harm or abuse will actually occur: (*MJB v. Family and Children's Services of Kings County*, 2008 NSCA 64, paragraph 77.)

2.1 KP Protection Concerns

[10] Prior to the Minister’s involvement, C, who is now eight years old, was living with her mother and two first cousins and was spending every second weekend with LB and SB. The Minister became involved with this family after two referrals involving C’s mother, KP; the first in respect of domestic violence and the second in respect of KP’s substance use. Both of these referrals were substantiated following investigation.

[11] In April of 2023, the Minister requested that C (who had been staying with LB and SB) continue to stay with them following KP’s involvement in a serious car accident which resulted in multiple charges against KP including impaired operation of a motor vehicle, failure to stop after an accident resulting in bodily

harm, and dangerous operation of a motor vehicle causing harm. Shortly thereafter KP admitted to an Agency employee that she had used cocaine, had been drinking on the weekends and, prior to the car accident, had been too depressed to get C ready for school or to take her to school.

[12] After C was placed with LB and SB, KP was often late or cancelled access visits with C (her access was eventually put on hold and not reinstated), continued to use substances, sold drugs, drove without a license, engaged in risky behaviour (resulting, for example, in her being stabbed three times), experienced inconsistent and unstable housing, failed to engage in services such as random urinalysis, was incarcerated for several months and upon her release failed to reside with her surety as required by the terms of her release. KP was not in contact with the Agency following her release from prison.

[13] KP failed to demonstrate any insight into the protection concerns caused by her behaviours. She has been unwilling or unable to change her high-risk lifestyle choices and has not followed through on any of the recommendations of her psychiatric assessment.

2.2 DB Protection Concerns

[14] DB did not participate in any services requested by the Agency. In October of 2022, DB's other three children were taken into the care of the Minister of Community Services. Shortly thereafter, DB's access with C was put on hold because he failed to engage in services (including urinalysis) and provide basic information to begin services. DB repeatedly asked LB and SB for money and attended their home against the Agency's direction.

[15] DB failed to demonstrate any insight into the protection concerns caused by his behaviours. He has been unwilling or unable to engage in any services offered by the Agency, experienced inconsistent and unstable housing, and failed to comply with the Agency direction that he refrain from attending LB and SB's home.

[16] Neither KP nor DB presented a plan of care for C, filed any evidence in this proceeding, or attended at the trial.

[17] I find that the circumstances that triggered the first order for protection continue and that other unaddressed protection concerns have arisen since that time (*Catholic Children's Aid Society of Metropolitan Toronto v. M.C., Supra*

page 199). I find C continues to be a child in need of protective services based on Section 22 (2) (b), (f), (g) and (i).

[18] The maximum statutory deadline for this matter expired on November 24, 2023. KP and DB have not demonstrated any insight into the protection concerns caused by their behaviours, have not addressed those protection concerns and have not assumed any responsibility for parenting C and as a result have not and will not achieve a stable and safe level of parenting functioning by the statutory deadline. (*Nova Scotia (Minister of Community Services) v. L.L.P.*, 2003 NSCA 1, paragraph 25 and *DAB v. Family and Children's Services of Kings County*, 2000 NSCA 38, paragraph 51).

[19] I order that C be removed from the care of her parents because I am satisfied that less intrusive alternatives including services to promote the integrity of the family have been attempted and failed and would be inadequate to protect C. (CFSA Subsection 42 (2)).

[20] I will now consider whether, as a less intrusive alternative to a permanent care and custody order, C's placement with a relative with whom she had a meaningful relationship at the time she was taken into care would be in her best interest (CFSA Subsection 42 (3) and 46 (4)).

2.3 Is the Proposed Less Intrusive Alternative Inadequate to Protect the Child?

[21] I accept C had a meaningful relationship with LB and SB when she was taken into care and LB and SB are the only two relatives who have identified themselves as a possible less intrusive alternative to a permanent care and custody order. I will determine whether C's placement with LB and SB is a less intrusive alternative to permanent care and custody and in her best interests.

[22] The Minister submits that an order placing C in the Minister's permanent care and custody is in her best interests. The Minister says that it is not in C's best interests to be placed with her great grandparents.

[23] The Minister says that to avoid permanent care for C, LB and SB must present a plan of care that is sound, sensible, workable, well conceived and has a basis in fact. (*Children's Aid Society of Halifax v. S.M.R. and B.* 2001 NSCA 99, paragraph 31). The Minister says that the proposed plan does not meet this threshold for three reasons:

1. LB and SB have not presented a stable plan. At the ages of 81 and 79 respectively, LB and SB cannot reasonably be expected to be able to provide C with a stable home environment until she is 19 (C turns 9 in December). LB and SB will be 91 and 89 when C turns 19.

2. LB and SB have not demonstrated that they will protect C from exposure to her parents.
3. LB and SB have identified unacceptable or inappropriate support persons as their care alternatives.

[24] LB and SB say that their plan of care for C is sound, sensible, workable, well conceived and has a basis in fact. They say that they have provided for C for much of her life and are willing to do so again for the rest of their lives. They say that I should place C with them pursuant to Section 42 (3) of the CFSA.

[25] I must determine if LB and SB's have presented a reasonable plan for C's care. I must consider the reasonableness of LB and SB's proposed family placement by considering whether it is sound, sensible, workable, well conceived and has a basis in fact (*Children's Aid Society of Halifax v. T.B., supra*).

[26] The Minister is obliged to assess any reasonable family placement advanced as an alternative to permanent care.

[27] I will consider each of the three shortcomings identified by the Minister's in LB and SB's plan of care:

1. Is the plan stable?
2. Have LB and SB demonstrated that they will not protect C from exposure to her parents?
3. Are LB and SB's identified support persons unacceptable or inappropriate care alternatives?

2.4 Is the Plan Stable?

[28] I must determine if LB and SB's proposed parenting plan is sufficiently stable that it meets the criteria of being a reasonable plan.

[29] The Minister rejects LB and SB as an acceptable alternative to permanent care and custody because of their age. The Minister says that any proposed plan for C must place her in the same stable location with the same stable care givers for the remainder of her childhood which the Minister says is, in this case, ten years.

[30] The Minister says that LB and SB are already exhibiting signs that they are not an adequate placement for C. The Minister refers to the fact that on cross examination LB could not recall when some of his other great grandchildren had been placed with him and SB. The Minister also noted that LB had often

asked for further or repeated clarification of information which had been explained to him.

[31] LB and SB submit that they are up to the task of caring for C. LB and SB do not deny their age but say that they are well enough to care for C and that they are committed to doing so for the rest of their lives.

[32] In considering the Minister's position regarding the age of LB and SB, I note that the Minister did not identify any jurisprudence that endorsed an outside age range beyond which a proposed family placement would no longer be a reasonable alternative to a permanent care and custody order.

[33] Neither the CFSA nor the jurisprudence establish a maximum age for a potential family placement. I find that the age of the prospective family placement is one of the factors that I must consider in determining if the plan put forward by that family member is reasonable. The weight, if any, to be given to the age of the prospective family placement will depend on the facts of the case including but not limited to the age and current or anticipated needs of the child and the health and capacity of the proposed parent to meet those needs. The past parenting practice and the extent to which it establishes a demonstrated ability of the proposed parent to care for a child is relevant in

considering the relevance of the age of the proposed parent (*S.A.D. v. Nova Scotia (Minister of Community Services)*, 2014 NSCA 77).

2.4.1 Are LB and SB Healthy?

[34] The Minister tendered no evidence regarding the health or anticipated life span of LB or SB or how long they will be able to offer stable engaged care for C. The Minister invites me to presume that LB and SB are simply too old to be a stable long-term placement for C.

[35] The evidence establishes that LB and SB are healthy and engaged.

[36] LB and SB own their own home and they drive. The uncontradicted evidence is that LB and SB visited with C twice a week after she was removed from their home in the spring of 2023 until this trial in November, driving 50 minutes each way for those visits.

[37] In their plan of care, LB and SB say that they are able to get C to all of her appointments and extra curricular activities. They also say that they support her continuing to access the psychologist that C has been seeing.

[38] LB has recently undergone surgery for cancer but the uncontradicted evidence is that his prognosis is positive. SB's uncontradicted evidence is that she has no major health issues.

[39] LB and SB both testified at the trial. LB had a difficult time hearing questions and at times did not recall statements which the record reflects he had made in the past. LB's presentation at trial did not raise any concern for me that he would be unable to care for C. SB's hearing was fine and she had a firm grasp on the evidence and her prior statements. SB's presentation at trial did not raise any concern for me that she would be unable to care for C.

[40] I am satisfied that LB and SB are healthy enough to care for C. There is no evidence that they will be physically or mentally unable to care for C in the near future.

2.4.2 Does C Have Unique Needs?

[41] I must consider C's age and circumstances to determine if she requires care givers who younger than LB or SB or have different capacities than LB or SB.

[42] C is eight years old but will very soon turn nine. While still very much in need of parenting she does not need to be dressed, bathed, or carried by her care givers.

[43] The Minister has not established that C has any special needs that cannot be adequately addressed by persons who are LB and SB's age. C does not have

physical disabilities or limitations or any violent or aggressive behavioural challenges.

[44] C has worked with Registered Counseling Therapist, Devin Rankin, since September of 2022. Several of Devin Rankin's reports were tendered with consent without the necessity of calling Devin Rankin as a witness. Devin Rankin did not identify any condition or circumstance in C's mental, physical, or emotional health that would require a proposed parent to be of a certain age, state of health or have certain physical capacities. Devin Rankin offered this comment regarding C in the context of her foster placement:

The prognosis for C's continued functioning continues to be positive as long as she has the opportunity to live in a safe, loving, structured and stable environment similar to her current foster home placement. The placement continues to support her developmental needs and the foster parents appear to continue being dedicated to ensuring C's needs are met. C has continued to verbalize positive feelings regarding her current placement and has advised of having no problems or concerns in the environment.

[45] Devin Rankin has not identified any particular need on C's part, or any particular physical capacity or skill required of her care giver. Devin Rankin says that C needs a "safe, loving, structured and stable environment".

[46] I find that there is nothing about C's age or circumstances which supports a finding that LB and SB are too old or otherwise unable to care for C or provide her with a safe, loving, structured and stable environment.

2.4.3 Past Parenting Practice

[47] I find that in considering LB and SB's age it is relevant to consider their recent experience as care providers for C (until she was removed from their care in the spring of 2023).

[48] LB and SB say that they have been a consistent presence throughout C's life and have been a major source of stability for her. C (together with her parents) had lived with LB and SB when she was a baby. The uncontradicted evidence is that throughout her life, C has spent weekends, holidays and her summer vacations with LB and SB.

[49] This is the second protection proceeding involving C and her parents. The first proceeding commenced and ended in 2015. For several months during that first proceeding, the Minister placed C with LB and SB. No concerns with respect to that supervised placement were identified to me.

[50] The Minister placed C with LB and SB in April of 2022; she remained with them for almost a full year. The evidence establishes that C benefited and made progress on a number of fronts while in the care of LB and SB.

[51] SB testified that she saw positive changes in C over the year that lived with them. SB testified that when C came to live with them that C would

compulsively wash the dishes she intended to eat off, could not sleep alone, could not sleep without a night light on, would check and double check to ensure the house was locked up at night and was indecisive about what clothes to wear to school.

[52] The evidence also disclosed that when C was placed with LB and SB in April of 2022, she was having trouble eating and that it was difficult to get her to eat anything other than McDonalds, bananas, or banana smoothies.

[53] By May of 2022 C had started sleeping and eating better.

[54] In addition, SB testified that over time C stopped compulsively washing her dishes and stopped checking for locked doors at night. SB testified that initially C was driven to school but over time became more independent and asked to take the bus to and from school and eventually walked from the B's home to and from the bus. SB's evidence that C made these positive developments while in her great grandparents care was not contested. The evidence of Registered Counselling Therapist, Devin Rankin, corroborated SB's perspective.

[55] LB and SB testified that SB slept with C every night from April of 2022 to March of 2023 (when C was taken into the Ministers' temporary care and custody) because of C's fears. This evidence was not contested.

[56] LB and SB ensured that C attended all of her appointments while in their care. They took C to an Occupational Therapy Assessment with Jennifer Goguen. They ensured that C met regularly with Devin Rankin.

[57] LB and SB were not the only persons who saw positive improvement in C while she lived with them. Their perspective was affirmed by C's therapist and her teacher.

[58] The record reflects that C's teacher told two agency employees that she felt that C had made a lot of improvements since "coming to live with her great grandparents and they are doing a great job supporting C". That teacher told the workers that she had requested to have C in her class.

[59] No treating professional offered an opinion that LB and SB had not met C's needs or failed to provide her with a safe, loving, structured and stable environment. In fact, Devin Rankin also thought that C benefitted from her great grandparents' care.

[60] In Devin Rankin's November 8, 2022, report Devin Rankin stated in part:

The prognosis for C's continued functioning is positive as long as C has the opportunity to live in a safe, loving structured and stable environment. She requires caregivers who are willing to devote the time and energy to meet her needs. The current family placement appears beneficial for C and her current caregivers appear dedicated to ensuring her physical and emotional needs are met.

[61] Devin Rankin made a similar report to Agency employee, Holly White, who deposed in her affidavit sworn on November 17, 2022, that Devin Rankin reported to her that C's placement (with LB and SB) was beneficial and meets her needs. This comment was reiterated in Ms. Quigley's affidavit sworn on February 15, 2023. In that affidavit Ms. Quigley also noted that on February 8, 2023, Devin Rankin told her that C "has been making progress in the home of [SB and LB]."

[62] C was removed from her great grandparents home just over a month after these comments were made by Devin Rankin.

[63] The Minister dismisses developments C made by saying that it is not surprising that C made gains after leaving her mother's care and that C has also thrived at her foster placement.

[64] I find that the evidence establishes that C benefited from being placed with LB and SB and made significant progress while in their care.

2.4.4 LB and SB's Engagement with C After Her Taking into Care

[65] I will also consider LB and SB's engagement with C after she was taken into care to assess what level of care might be expected from them in the future.

[66] LB and SB were upset when C was taken from their home and placed in the Minister's temporary care and custody. The Minister required that their post removal visits with C be supervised and permitted two visits per week. The uncontradicted evidence is that LB and SB attended every possible visit with C driving 50 minutes each way for those visits.

[67] No problems were identified by the Minister with respect to the behaviour of either LB or SB on any of those visits.

[68] Devin Rankin offered the following insight into C's perspective on these visits with her great grandparents:

C's has maintained consistency regarding her response to not having joint sessions with her mother at this time. Efforts have been made to explore C's resistance however she has continued to advise that she does not why and that she is "very sure" that she does not want to see or talk to her mother at this time. There has been minimal change regarding C's perception of visits with her great-grandparents and she continues to advise that she enjoys the visits and wants these visits to continue.

[69] I find that LB and SB have been a consistent, beneficial, and stabilizing presence in C's life for her entire life. They responded with dedication and insight to C's fragile state when she was placed with him in April of 2022. LB and SB's commitment is in large part responsible for C's progress after April of 2022. Their commitment to C after she was taken into care affirms that they would continue to be able to meet C's need.

[70] I find that LB and SB's ages have not negatively affected their ability to provide care for C. I have no evidence that that they will not be able to care for C in the future.

[71] The Minister adduced evidence regarding two circumstances, a phone call which C had with LB and SB the night she was taken into care and LB's refusal to assume care for another of his great grandchildren, which circumstances the Minister says support their position that it is not in C's best interests to be placed with LB and SB. I will now address each of those circumstances.

2.4.5 The Phone Call

[72] The Minister is critical of LB and SB's behaviour during their call with C on the night that she was taken into care for three reasons: first the Minister says that SB had been told to be composed during the call and that contrary to that direction SB was emotional, second the Minister says that LB and SB asked the new foster parent to contact C's grandmother and third, the Minister says that LB and SB suggested that C should speak with them privately away from the foster parent's supervision.

[73] LB and SB admit that they were upset on the call with C. I am not surprised that they were upset nor am I critical of them for being upset. While the

Minister may not have approved of LB and SB's level of upset during that call, their behaviour on the subsequent fifty visits must be considered. The Minister had no issues whatsoever with LB and SB's behaviour or their interactions with C in their fifty in person visits with C following that call. The fact that LB and SB may have "gone off script" and been emotional during their call with C does not establish that they are too old to care for her. The behaviour on the subsequent fifty visits speaks of their commitment to C and their ability to engage with her in a healthy and positive manner.

[74] LB and SB admit that they asked the foster parent to have C contact her paternal grandmother, TP. The evidence establishes that the worker told LB and SB that TP's contact time with C had to be in the community. There is no evidence that C was prohibited from having phone contact with TP or that a worker had specifically instructed LB and SB to not ask the foster placement to have C call her grandmother. The Minister is critical of LB and SB for suggesting that C call her grandmother. In the absence of a specific direction prohibiting that request, I accept that it was not inappropriate for a concerned great grandparent to suggest that C, on the night that she was taken into the Minister's care, might benefit from calling one of her grandmothers.

[75] The Minister suggests that LB and SB suggested that C, on the night she was taken into care, speak to them privately breaching the requirement that their contact with C be supervised. There is no evidence LB and SB asked C to speak with them privately. Although the evidence confirms C asked her foster placement if she could speak privately with LB and SB there is no evidence that idea came from LB or SB. Although it was suggested that LB and SB did make that request of C, on cross examination the worker admitted it is not clear if C came up with the idea. I find there is no basis to be critical of LB or SB because C asked to speak with them in private.

2.4.6 The Other Great Grandchild

[76] LB admitted on cross examination that he and SB were approached to be a placement for another great grandchild but declined. LB testified that they declined because that child needed help beyond which LB and SB could offer. LB testified that they could not control the child or get him to sleep and that he acted up all the time. LB testified that child protection's involvement was needed to ensure the child obtained the psychological analyses that he needed. LB rejected the suggestion that LB's age was a factor in his refusal to care for this other grandchild.

[77] The fact that LB and SB told the Minister that they were unable to care for a particularly challenging great grandchild should not be used against them as evidence of a lack of commitment or an acknowledgement that they are too old to be primary care givers to a young person. Rather, LB and SB's position that they could not provide the required level of care to the other great grandchild should be commended as it is evidence that they understood the challenges this child faced and their own inability to meet his needs. They knew that the child would have a better chance of securing the needed treatment through the Minister than with them. Unlike the circumstances involving that child, LB, and SB stand before me saying that they are up to the task of caring for C.

[78] I do not consider LB and SB's refusal to assume care for another of great grandchild who had significant needs as evidence that they are too old to care for C.

[79] The evidence does not support the Minister's position that LB and SB are too old to care for C.

3 LB and SB Have not Demonstrated that They Will Protect C From Exposure to Her Parents.

[80] The Minister's second reason why C should be placed in permanent care is the fact that LB and SB have not demonstrated an ability to protect C from her father (DB).

[81] The Minister says that LB and SB' failure to keep DB away from C or shelter her from their contact with him raises serious questions regarding their ability or willingness to do so in the future. The Minister says that it is not in C's best interests to be exposed to her father.

[82] The Minister says that in addition to the court's supervised placement orders which prohibited unapproved contact between C and DB, LB and SB were told several times, orally and in writing, that DB was to not have any contact with C unless authorized by the Minister. They say that LB and SB failed to follow that direction, failed to take steps to ensure DB would not attend at their home and failed to disclose to the Minister when DB did attend at their home. The Minister says that DB attended at LB and SB's home on more occasions than they admit.

[83] LB and SB admit that they did permit DB to attend at their home to see C in July of 2022 which they both admit now was an error on their part. They say

that in October of 2022, DB attended at their home to deliver his other children into their care, but that DB did not have any contact with C at that time. They admit that DB called them frequently and that on two occasions they met him to give him money. They deposed that DB did not have any contact with C on either occasion. SB deposed that she and LB should have done a better job of sheltering C from DB's calls.

[84] LB and SB say that DB would attend at their home but that they told him to leave on each occasion and he did so without seeing C. LB and SB say that DB's attendance at their home was intended to sabotage their relationship with C and that he stated, "If I can't have her, you can't have her either".

[85] They say that the last time DB attended at their home was on March 18, 2023, at which time they did not let him into their home but rather called the police. They say they have now severed ties with DB and have not communicated with him since March 18, 2023.

[86] I have considered the evidence and find that although LB and SB permitted DB to have unapproved contact with C in July of 2022, they have not permitted him to have any contact with C since July of 2022.

[87] I find that DB attended at LB and SB's home in October of 2022 but did not have contact with C.

[88] DB attended at LB and SB's property on March 18, 2023, but they did not permit him to enter their home and instead called 911 when he refused to leave their property. LB and SB failed to disclose this incident to the Minister during a March 20, 2023, in-person meeting which focused in part on DB's contact with C. LB disclosed the March 18, 2023, incident to the Minister on March 20, 2023, by phone shortly after the in-person meeting ended.

[89] I find that LB and SB acted protectively toward C on March 18, 2023, by not permitting him to see C and by calling 911 when he would not leave their property. They should have disclosed that incident to the Minister immediately and as well should have disclosed it during the in-person meeting on March 20, 2023. Notwithstanding the fact that LB failed to disclose the event on March 20, 2023, I am satisfied that he was not seeking to deceive or withhold information from the Minister. While I find that LB should have disclosed this information sooner than he did, I find he did volunteer the information and more importantly that the information at issue confirmed that LB and SB had acted protectively.

[90] LB and SB admit that DB called them frequently and on two occasions they met him to give him money. The evidence establishes that C did not have any contact with DB on either occasion, but she was aware that LB was meeting with DB. SB deposed that she and LB should have done a better job of sheltering C from DB's calls.

[91] I find that LB and SB's contact with DB was not prohibited by the Minister. I agree with LB and SB that they should have sheltered C from being aware of her father's calls, but I am satisfied that none of those contacts put DB and C in contact with each other.

[92] LB and SB's unchallenged evidence establishes that they have not spoken to DB or given him any money since March 18, 2023.

[93] The Minister refers to two situations which they say speak of LB and SB's inability or unwillingness to act protectively toward C. These two situations, both of which arose after C was removed from LB and SB's care, are a rumour that DB was moving into LB and SB's home and LB's incorrect statement that he obtained a *Protection of Property Act* order against DB.

[94] There is no evidence LB and SB agreed DB could move back into their home after C's removal. LB and SB capacity to act protectively should not be impugned because of an unsubstantiated rumour.

[95] With respect to the *Protection of Property Act* order, the evidence establishes that the Minister discussed such an order with LB. The evidence establishes that LB did contact the police about a *Protection of Property Act* and had been told that DB could not be served with such an order because he did not have an address.

[96] With respect to the Minister's assertion that LB told the Minister that he had obtained such an order, which was not true, I find that such an order was not obtained. LB neither admits nor denies the assertion that he told the Minister he had obtained the order. In considering this assertion I am mindful that LB and SB did not permit DB into their home on March 18, 2023, and called 911 when he would not leave and have not had contact with him since then. The assertion that LB said he had an order when he did not in fact have the order, if true, does not undermine my confidence in LB and SB that they will ensure going forward DB does not have contact with C.

[97] I find that LB and SB demonstrated that they can and will act protectively toward C in so far as DB is concerned. I am satisfied that in the future LB and SB would ensure that DB not have contact with C without the Minister's prior approval and that they would ensure that they not have any contact by any means with DB in C's presence.

4 Are LB and SB's Identified Support Persons Unacceptable or Inappropriate Care Alternatives?

[98] The Minister says that LB and SB's plan of care for C is not reasonable as it relies on C's grandmothers TP and KB as fallback care givers. The Minister says that both women have a history with the Minister and have given children up to the Minister for a variety of reasons. Specifically, the Minister says that TP and KB have "abandoned" children who have exhibited behavioural concerns.

[99] LB and SB have identified C's grandmothers as persons who will support them in their care for C. They say that they will ensure that C's grandmothers remain a significant part of her life. LB and SB say that they will care for C for the rest of their lives and if they should pass C's grandmother, TP, will care for her on a full-time basis.

4.1.1 TP

[100] TP is C's maternal grandmother. The Minister says that TP is not an appropriate alternative caregiver for C given her history of abandonment. The Minister's evidence established that TP asked the Minister to take C's mother into care twice and that TP struggled with substance usage, domestic violence, and transiency.

[101] The Minister's evidence also establishes that C's mother exhibited significant behavioural concerns, repeatedly ran away from foster homes, and may have used substances while in TP's care. The Minister's evidence established that the Minister had considered seeking permanent care of C's mother but elected to return her to TP. The Minister did not have any engagement with C's mother after she was 14. The latest of these events occurred seventeen years ago.

[102] TP's evidence established that she and her partner own their own home and that TP works full time as a chef. TP's affidavit acknowledged that she had a criminal record for shoplifting and assault from fifteen years ago and that C's mother and her siblings were involved with the Minister but were returned to TP at the end of the proceedings.

[103] TP says that she often babysat C, took C on vacation, and took her to school prior to C being placed with LB and SB. TP says that she saw C almost every day before she was placed with LB and SB.

[104] TP says she has not had any contact with her daughter and has no contact with DB. She says that prior to the Minister's involvement she was concerned that C's mother was using substances and says that she told LB and SB to not give C back to C's mother.

[105] On cross examination TP did not agree with the Minister's suggestion and evidence that she had asked the Minister to take C's mother into care twice, or that she had slapped C's mother.

[106] I have considered the evidence and submissions regarding TP's suitability to be C's alternate care giver.

[107] I start by observing that TP did not attempt to deny her past parenting challenges or her personal difficulties. TP did not deny that she had used marijuana, was involved with the Minister or that she struggled in her attempts to parent C's mother. TP volunteered her criminal record. Ultimately, the Minister returned C's mother to TP's care. The facts that the Minister says TP refused to acknowledge happened over seventeen years ago.

[108] Both the Minister and TP referred to C's mother's behavioural concerns. TP spoke of her attempts to secure help for KP.

[109] I find that TP, although did not admit facts established in the Minister's evidence, she did acknowledge her past personal and parenting difficulties.

[110] TP has been a constant presence in C's life and is willing and able to continue to be a part of her life. I am satisfied that TP is an acceptable alternate caregiver for C. I am satisfied that that TP has and would continue to act as a caring and protective care giver for C.

4.1.2 KB

[111] The Minister says that earlier this year KB consented to one of her grandchildren, of whom she had joint custody with the child's mother, being placed in the Minister's Permanent Care and Custody. KB had declined to put a plan for the child's care forward.

[112] KB had cared for this child in 2018 and had left her employment to do so. The child returned to his mother's care in 2020. The Minister remained involved and appears to have been open to KB putting forward a plan for the child.

[113] The Minister says that KB abandoned the child.

[114] KB says that she was unable to care for the child due to his mental condition. She testified that his mental issues had gotten stronger since he had been back with his mother. She testified that she was told by “child services” that if the child was in care, he would get the care he needed but if he was with her, she would not be able to give him the care he needed because of the costs. She said that he could not get the help he needed from inside the home and that is the only reason she gave him up.

[115] KB says that she has not spoken to her son, DB, in two years and that she has no relationship with C’s mother.

[116] I do not accept that KB abandoned her grandchild. The child’s parents could not care for him, and KB was unable to meet his needs. I find that KB understood the child’s needs and that those needs could not be met in her care. KB demonstrated that historically she had been willing to care the child and in fact left her job to do so but that she could no longer do so when his needs exceeded her capacity to address those needs.

[117] I find it persuasive that the Minister was open to having the child placed permanently with KB. I interpret this to mean that the Minister was of the view that KB could be a protective care giver for the child.

[118] I find that KB is an acceptable alternate care giver for C. I have no reason to believe that C would not be cared for and safe while in KB's care.

5 Conclusion

[119] LB and SB have put forward a parenting plan for C that is sound, sensible, workable, well conceived with a basis in fact.

[120] C's placement with LB and SB is in keeping with the objectives of the CFSA and with C's rights as affirmed in the preamble to the CFSA and in particular with the following rights:

AND WHEREAS the basic rights and fundamental freedoms of children and their families include a right to the least invasion of privacy and interference with freedom that is compatible with their own interests and of society's interest in protecting children from abuse and neglect;

AND WHEREAS parents or guardians have responsibility for the care and supervision of their children and children should only be removed from that supervision, either partly or entirely, when all other measures are inappropriate;

[121] C's placement with LB and SB is in her best interests, is a less intrusive result than placing C in the Minister's Permanent Care and Custody and addresses the protection concerns that prevent C's return to the care of her parents.

[122] Accordingly, I grant a *Parenting and Support Act* order placing C in the primary care of LB and SB. LB and SB shall have sole decision making for C.

LB and SB will ensure that C has no contact with her parents without the Minister's prior approval unless such contact is approved by the court. LB and SB shall ensure that they do not have any contact with DB or KP in front of C. LB and SB are ordered to contact 911 if DB attends at their home for any reason.

[123] The Minister's application for an Order placing C in their Permanent Care and Custody is dismissed.

[124] I will ask Ms. Wheeler to draft the order dismissing the Minister's motion.

[125] I will ask Ms. Anderson to draft the *Parenting and Support Act* order.

Daniel W. Ingersoll, J.