

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the *Child and Family Services Act*,
S.N.W.T. 1997, c.13, as amended;

AND IN THE MATTER OF the children,

S., (J.)
Born on January 25, 1999

S., (N.)
Born on September 7, 2000

APPREHENDED January 26, 2003

Application for a Permanent Custody Order by the Director of Child and Family Services, pursuant to section 28(1)(d) of the *Child and Family Services Act*.

Heard: Hay River, Northwest Territories

Date: January 26 & 27, 2006

Decision: February 22, 2006

**REASONS FOR DECISION
of the
HONOURABLE JUDGE Bernadette SCHMALTZ**

Counsel for the Director: Sheila McPherson

Counsel for the Mother: Betty Lou McIlmoyle

Counsel for the Father: Michelle Staszuk

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I. INTRODUCTION

[1] This is an application by the Director of Child and Family Services (the Director) for an Order placing J.S., born January 25, 1999 and N.S., born September 7, 2000, (the children), in the permanent custody of the Director pursuant to section 28(1)(d) of the *Child and Family Services Act* (the Act). B.S. is the mother, and R.I. is the father, of J.S. and N.S.

[2] The hearing of this Application commenced in Hay River, Northwest Territories, on January 26, 2006, and was completed January 27, 2006. Counsel for the Director and both parents, with Counsel, appeared on the Application. Upon completion of the hearing I reserved my decision.

[3] At the hearing, the Director called two witnesses: the child protection worker who is the case manager of the file involving these children, and the foster mother of the children. Both B.S. and R.I. also testified on the hearing. On consent of all parties, the Director filed an Exhibit Book containing copies of court documents and records from the Hay River Health and Social Services Authority file on these children (Exhibit 1), and certified copies of five Information's pertaining to criminal charges that R.I. has been

convicted of (Exhibit 2). On behalf of R.I., two exhibits were filed: a copy of a Statement from the Hay River Housing Authority dated January 3, 2006 (Exhibit 3), and a copy of R.I.'s Resume (Exhibit 4). No objection was taken to any of the material or exhibits filed on the hearing.

II. SOCIAL SERVICES INVOLVEMENT

[4] Hay River Health and Social Services Authority has been involved with this family since June, 1999. Numerous Voluntary Support Agreements and Plan of Care Agreements have been entered into since that time. The children were apprehended from B.S.'s care on January 26, 2003. R.I. was incarcerated at the time. The children were 15.5 months and 4 years old when they were first apprehended. They have been in foster care continuously since that time. They are now 5 and 7 years old.

[5] After the children were apprehended in January, 2003, a Temporary Custody Order was granted, placing the children in the temporary custody of the Director until August 17, 2003. When the Temporary Custody Order ended, the children were not returned to the care of B.S., but remained in the foster home they had been placed in pursuant to a Plan of Care Agreement entered into by B.S. The children have remained in this foster home continuously since apprehension. Plan of Care Agreements were continuously entered into until the expiration of the Plan of Care Agreement entered into on July 13, 2005. At the expiration of that Agreement, the Director commenced this Application for permanent custody of the children.

III. TEMPORARY CUSTODY ORDER

[6] It is common ground on this Application that the children are currently in need of protection. B.S. and R.I. both concede that neither one of them is able at this time to properly care for the children. The only issue is what order should be made pursuant to section 28 of the *Act*.

[7] The relevant portions of Section 28 of the *Act* state:

28(1) A court may make one of the following orders that is, in the opinion of the court, in the best interests of the child who is the subject of the hearing:

...

(c) the child be placed in the temporary custody of the Director for a specified period not exceeding 12 months, and the court may specify in the order

- (i) any terms and conditions that the court considers necessary and proper, and
- (ii) that the child's parent or person having actual care of the child
 - (A) at the time the declaration was made under subsection 27(2), where the child was not apprehended, or
 - (B) at the time the child was apprehended, where the child was apprehended,
 be granted access to the child on the terms and conditions that the court considers appropriate;

(d) the child be placed in the permanent custody of the Director, and the court may specify in the order

- (i) any terms and conditions that the court considers necessary and proper, and
- (ii) that the child's parent or person having actual care of the child
 - (A) at the time the declaration was made under subsection 27(2), where the child was not apprehended, or
 - (B) at the time the child was apprehended, where the child was apprehended,
 be granted access to the child on the terms and conditions that the court considers appropriate

....

(9) Where the court makes an order under paragraph (1)(b)¹ or (c), a Child Protection Worker, on serving notice on the person mentioned in section 25, may bring the matter again before a court and the court may

- (a) extend the order for one or more periods;
- (b) vary the order or make any further order under subsection (1) that the court considers necessary and proper; or
- (c) discharge the order.

(10) A court may not make or extend an order under subsection (9) that would result in a child being in the temporary custody of the Director for a continuous period exceeding 24 months.

¹ Section 28(1)(b) deals with supervision orders and is not applicable to this issue.

[8] Two issues arise with respect to the order to be made on this trial:

- 1) Can an order placing the children in the *temporary* custody of the Director be made; and
- 2) If a temporary custody order can be made, is it in the best interests of the children to:
 - place them in the temporary custody of the Directors for a further period of time, or
 - to place them in the permanent custody of the Director.

[9] The Director's position is that, pursuant to s. 28(10) of the *Act*, I am precluded from making a further order for temporary custody as such an order would result in the Children being in the temporary custody of the Director for a continuous period exceeding 24 months.

[10] B.S.'s and R.I.'s position is that the Plan of Care Agreements entered into between July 17, 2003, and July 13, 2005, did not result in the children being in the *custody* of the director during that time, but only in the *care* of the Director, and therefore, as s. 28(10) is not engaged, it is possible to make a temporary custody order pursuant to s. 28(1)(c). Both B.S. and R.I. would consent to an order placing the children in the temporary custody of the Director for a further period, and then returning the children to either B.S. or R.I.

[11] Section 28(10) applies to orders made under section 28(9). Section 28(9) deals with extensions, variations, or further orders made under 28(1)(c)², i.e. temporary custody orders. In order to find that a temporary custody order could not be made in this case, I would have to find either:

- That this application is in effect an application to extend the temporary custody order made February 17, 2003; or
- That each of the Plan of Care Agreements entered into between July, 2003, and July, 2005, were extensions of the temporary custody order made in February, 2003, and, this Application is an application to further extend or vary that order, or to make a further order under ss. 28(1).

² Section 28(9) also deals with orders made under s. 28(1)(b) which is not applicable in this case.

If one of those positions cannot be maintained, then s. 28(10) would have no application, as I would not be making an order under section 28(9).

[12] On February 17, 2003, the children were found to be in need of protection and were placed in the temporary custody of the Director for a period of 6 months with the condition that the parents had access to the children at the discretion of the Director. There were no other terms or conditions in that order. On the face of it it would appear that the Order would end on August 16, 2003, and without something further, the children would be returned to the custody of B.S. Prior to this Application there were no other court applications after the Order of February 17, 2003; after that time, the care of the children was continually pursuant to Plan of Care Agreements.

[13] I cannot accept that the Application filed by the Director on August 17, 2005, was an application to extend or vary the February 17, 2003 Order. Again, on the face of it, that Order ended 2 years earlier, and no application was ever made to vary or extend that Order beyond August 17, 2003.

[14] However, I have also considered whether the Plan of Care Agreements entered into from July 16, 2003, through to July 13, 2005, extended the temporary *custody* order of February 17, 2003, i.e. did the children, whether or not there was a Court Order, remain in the temporary *custody* of the Director pursuant to the Plan of Care Agreements? On reading through the Plan of Care Committee and Agreement sections of the *Act*, as well as the temporary and permanent custody sections of the *Act*, I find the legislation does not contemplate a Plan of Care Agreement and a Custody Order existing contemporaneously.

[15] Section 15(2) states:

15(2) A plan of care committee shall be composed of

- (a) at least one person who has lawful custody of the child;
- (b) the child, where the child has attained the age of 12 years and wishes to sit as a member;

- (c) one member of the Child and Family Services Committee, where there is a Child and Family Services Committee in the child's community;
and
- (d) one Child Protection Worker.

[16] The requirement that at least one person who has lawful custody of the child to be on the Plan of Care Committee, would require, if child was in the *custody* of the Director, that the Director would have to be on the Plan of Care Committee, but the parent of the child would not. Whereas it may be that such a requirement is only curious, and not necessarily determinative of the issue in this case, I have also considered section 22(1), which states:

22(1) A member of a plan of care committee who is the Child Protection Worker or a person who has lawful custody of the child who is the subject of the plan of care agreement may terminate the plan of care agreement on 10 days written notice to the other.

Therefore, if the child was in the custody of the Director while under a Plan of Care Agreement, then the only parties that could terminate the Plan of Care Agreement would be the Child Protection Worker or the Director.

[17] A finding that a child is in the custody of the Director pursuant to a Plan of Care Agreement would result in the Director having no obligation to include the parents as members of a Plan of Care Committee, and also result in the parents of the child having no right or legal means to terminate a Plan of Care Agreement. I find such an interpretation of the *Act* inconsistent with the principles and objectives of the legislation; such an interpretation could result in the exclusion of parents from involvement in the care of and plans for their children rather than the reunification of families. Without clear wording indicating that such an interpretation is correct, an interpretation inconsistent with the principles, goals, and objectives of the legislation should be avoided.

[18] Therefore I find that the children were in the custody of the Director from January 26, 2003 until August 17, 2003; from August 17, 2003 until August 17, 2005, the

children remained in the care of the Director, i.e. foster care, but B.S. had lawful custody of the children. As such, there being no issue that the children are presently in need of protection, it would be possible to make a further temporary custody order placing the children in the custody of the Director, if such an order were in the best interests of the children.

IV. BEST INTERESTS OF THE CHILDREN

A. History

[19] B.S. and R.I. lived together since some point prior to the birth of their oldest son, but have now been separated for approximately 3 years. I understand that their relationship was “on again – off again” and there may have been a number of separations even during the time that they were together.

[20] In February 2000, September 2003, and August 2004, R.I. was convicted of assaulting B.S. More particularly his convictions and sentences relevant to this proceeding are: February, 2000, a 7 month jail sentence (4 months for assault, 3 months for breach of undertaking involving breach of a condition to have no contact with B.S.); August, 2001, a two month jail sentence for breach of undertaking involving breaching a condition not to attend at B.S.’s residence; September, 2003, a one month jail sentence for assaulting B.S.; and August, 2004, a 5 month jail sentence (3 months for assaulting B.S. and 2 months consecutive for breach of probation involving breach of a condition to have no contact with B.S.).

[21] Child protection concerns on this matter relate to alcohol and drug abuse, exposure to repeated domestic violence, lack of suitable housing, and lack of parenting skills.

[22] The Plan of Care Report dated February 14, 2003, states “Social Service is not objecting to the children being returned to the natural father, *once it is deemed that he is*

able to provide an environment which provides for the children's needs." [my emphasis] In July, 2003, the Plan of Care Agreement refers to the need for alcohol counseling, housing, and treatment. Further in that Agreement there is reference to B.S. attending parenting classes. In January, 2004, the Plan of Care Agreement refers to the need for counseling, housing, and treatment. The Plan of Care Agreements from July, 2004, January, 2005, March 2005, May 2005, and July 2005, all refer to the need for B.S. to secure housing, and each Agreement makes specific reference to the fact that if progress is not made in this area, the matter will proceed to a child protection hearing.

[23] Counsel on behalf of R.I. noted that R.I. was not involved in the Plan of Care Agreements between July, 2003, and July, 2005, nor was he on the Plan of Care Committee. First, I note that pursuant to s. 17(1)(d) and (e)³, R.I. may have been ineligible to sit on the Plan of Care Committee dealing with his children having been convicted of assaulting B.S. and at various times being subject to process prohibiting him from having contact with B.S. It is also noteworthy that in September, 2004, R.I. was invited to participate on the Plan of Care Agreement Review scheduled for October 15, 2004; R.I. chose not to attend or participate in the Plan of Care Agreement review. I find that though R.I. might not have been involved in the Plan of Care Agreements dealing with his children, it was not because he was prevented from doing so, but because for whatever reason, he chose not to be involved.

[24] When this hearing commenced, neither B.S. nor R.I. had suitable housing or any arrangements or plans made or, I find, even contemplated, to provide for their children.

³ 17(1) Subject to ss. (1.1), a person who is or is to be a member of a plan of care committee is ineligible to sit as a member of the plan of care committee if he or she
 ...
 (d) has been convicted of an offence under the Criminal Code in relation to matters involving the child who is or is to be the subject of the plan of care committee or any person who is or is to be a member of the plan of care committee; or
 (e) is subject to an order, undertaking or other process restraining him from having contact with the child who is or is to be the subject of the plan of care committee or any person who is or is to be a member of the plan of care committee.

B. The Children

[25] On January 14, 2003, before the children were actually apprehended, they were placed in foster care for a period of time at the request of B.S. who at the time was having some difficulties coping with the demands of caring for the children. On January 26, 2003, while on an overnight visit with B.S., the children were apprehended from B.S.'s home at approximately 3:00 a.m. At that time the RCMP had contacted social services as they were arresting a male in the home, B.S. was passed out, and there was no one in the home to care for the children.

[26] The children were apprehended and were returned to the foster parents they had been staying with. The foster parents are related to B.S.

[27] When the children were apprehended, both children appeared to have developmental delays and speech or language difficulties. The oldest child, who was 4 years old at the time of apprehension, was not yet eating solid foods, and still drinking from a bottle.

[28] Both children have been living with the same foster parents since shortly before they were apprehended. The children are doing well in foster care, though both have special needs. Both children are currently in need of speech therapy, and will be receiving it once arrangements are made. The oldest child takes medication for seizures; he is currently in a modified grade one program at school. The youngest is in kindergarten. Efforts are being made to provide each child with an individual assistant in school to help each of them overcome difficulties that they may encounter and to prevent the gap between each child and other children of their age from widening as academic demands increase.

[29] The children have been in care since January 26, 2003, originally pursuant to a 6 month temporary custody order, and then pursuant to Plan of Care Agreements entered into by B.S.

C. The Father

[30] When R.I. testified on this matter, he said he wanted his children back in his care, or in the alternative, returned to B.S., and that he loved his children very much – I believe that.

[31] R.I. has had difficulties in his life. He “used to have an alcohol problem”, though denied having an alcohol problem now. He has taken and completed a 28 day residential program for alcohol addiction in the past. He has drunk alcohol since completing that program. In August of 2005, there was a physical confrontation between R.I. and B.S. Both were intoxicated at the time. When R.I. was asked if he had drunk since August, 2005, he answered “not that I know of”. I found that a curious, if not evasive, answer. In direct examination R.I. testified that he attended A.A. meetings; in cross-examination he knew when A.A. meetings were, but the last time he had attended was “last year” – he said it is hard for him to get to A.A. meetings and he has been busy.

[32] R.I. uses marijuana. He testified that he uses marijuana whenever it is available, and he last used marijuana 2 weeks ago. He is not working regularly, and when asked how he affords marijuana, he testified that he will work and accept marijuana as payment for his work. B.S. testified that she had seen R.I. use crack cocaine; when R.I. was asked if he used crack cocaine he answered “I don’t know, what is that?” I found that answer completely unbelievable. I questioned him on this answer and he admitted knowing what crack cocaine was, though maintained that he did not use it and people just said that he did. I find that R.I. has attempted to minimize his use or abuse of alcohol and drugs, and is in denial of any alcohol or substance abuse problems that he has.

[33] With respect to domestic violence, though R.I. did admit to the violence that he had been convicted of, I find that R.I. also attempted to minimize any problems he may

have with respect to physical violence. With respect to the incident in August, 2005, R.I. stated "I didn't start it, she did." He gave an unbelievable account of that incident: B.S. hit him so hard that he jumped and "accidentally" hit her. It is noteworthy that B.S. ended up attending the hospital after being "accidentally" hit by R.I. He also admitted that he was drinking at the time and did not really remember what happened. I do not believe R.I.'s version of what happened; I do not believe that his hitting B.S. was an accident. I believe B.S. with respect to what happened in August of 2005. When questioned about whether he gets violent when drinking, R.I. blamed others for getting him into trouble, and stated he is "not a fighter." His criminal convictions that were entered on this hearing belie his belief that he is not violent or "a fighter". R.I. has not taken any treatment or formal counseling to address issues relating to domestic violence. As he stated, he works on himself, on his own.

[34] R.I. last had an access visit with his children at Thanksgiving in 2005. That visit went well and he enjoyed having his children for the weekend. He has not had any meaningful contact with his children since that time. He says this is because of transportation difficulties and that "it is not the right time." When asked why he had not made any attempts to see his children since Thanksgiving, he was "not too sure", transportation was difficult to arrange, he had been working, he had been busy, he had been working on himself, and he had been sick and did not want his children to get sick. Over Christmas he had been working on himself and did not want anyone bothering him. R.I. comes into Hay River approximately once per week. He acknowledged that he could see his children whenever he wanted to, but that "now is not the time."

[35] R.I. currently lives approximately 24 kilometres outside of Hay River at Paradise Gardens at his cousin's home. He does not have a vehicle; his cousin does have a vehicle and comes into Hay River daily for work. He has not talked to his cousin about having his children live with him at her house, and when asked why he had not asked her about this he stated that she was tied up and works in town; further, she might say no. He has not yet done anything with respect to plans or arrangements should his children be returned to him, but if his children were returned to his care, R.I. said he

would find a house “real quick” and would find work immediately. I have to wonder why he has not done this yet.

[36] During the three years that the children have been in foster care, R.I. has not taken any steps to improve his situation as a parent, to establish a suitable environment to raise his children in, or to establish or maintain any kind of a parent/child relationship with his children. I accept he loves his children, but the needs of children, especially children as young as these children, are far greater than love alone. And I see nothing beyond love that R.I. is prepared to offer his children. Encouragement and assistance has been offered, but R.I. has chosen not to take advantage of it.

[37] I find that R.I. has no realistic appreciation or understanding of the responsibilities and the obligations involved in parenting children; he has no appreciation of the dependence that children have on their parents to provide for them, to care for them, to nurture them, to guide them, to raise them. Children cannot be put on hold because it is not the right time to care for them.

D. The Mother

[38] B.S. has been more involved than R.I. in her children’s lives since they have been in foster care. She has visited them more often and more regularly. She usually has one child at a time visit her, as she finds that having them both at once is too much for her to handle, as she stated, it would “drive me crazy.” It is to B.S.’s credit that she recognizes her limitations with respect to caring for her children, and has attempted to find a solution that both meets the children’s needs and she is able to handle.

[39] B.S. testified in direct examination that she was employed; she was in a relationship and engaged to be married, and that she was to find out within a few days about rental accommodation. She was attending A.A. meetings, and taking counseling as well. In direct examination, she seemed very unsure about agreeing that if her children were not returned to her, they should be returned to their father. In cross-

examination, she testified that she had not been drinking for the past 4 weeks. On cross-examination, she explained that she was not currently taking counseling, but she planned on starting counseling next month; that she knew when A.A. meetings were, but had not been attending A.A. meetings recently as they conflicted with her guitar lessons. She had been working since the past Monday, that is for 4 days. She was not sure what she would do with the children while she was working. She would look for a sitter, or she may quit this new job if she could get a job at a local coffee shop – she “might” go there – she had talked to them and they told her to try again in March. She had applied for an apartment 2 weeks ago. I find that B.S.’s plans for the future were very vague.

[40] In cross-examination, B.S. even seemed apprehensive about her current relationship – she quite hesitantly admitted to being engaged; when asked when she was to be married she again somewhat hesitantly said sometime in the next 2 years. She said her fiancé wants to be part of her children’s lives; he did not testify on this hearing. Last November she was living with someone else, so the seriousness of her current relationship is fairly recent.

[41] B.S. was “not quite sure” about R.I. having custody of the children; she was afraid of R.I., and was afraid that R.I. might hurt the children if he started drinking – she had “a funny feeling.” B.S. admitted that she could not handle having her two children with her together, and candidly admitted that she was not sure how she would overcome that if the children were returned to her care.

E. Assistance & Support Offered

[42] The Child Protection Worker testified that both B.S. and R.I. have been encouraged and offered assistance throughout the 3 years that their children have been in care. Both B.S. and R.I. testified that the Child Protection Worker had been helpful to each of them, was available to them, and supportive of them. Neither B.S. nor R.I. testified to any difficulties encountered with Social Services or with the Child Protection

Worker since their children have been in care. Both B.S. and R.I. have been encouraged to take a Parenting Course; parenting courses are offered sporadically in Hay River. A Basic Parenting Course was offered on the Hay River Reserve; this course was also to address alcohol and drug issues within the family. From the description of this course, it appeared ideal for both B.S. and R.I. Both R.I. and B.S., through efforts by the Child Protection Worker, were put on the list to take part in this course. Neither B.S. nor R.I. followed through and did not attend or participate in the course. R.I. testified, and the material filed shows, that the Child Protection Worker would assist R.I. with transportation if he wished to see his children; despite that, he has still had no arranged visits with his children since last October. The Plan of Care Report (dated January 26, 2006), and the material filed on this Application, sets out in detail the many and extensive efforts that have been made to encourage and enable B.S. and R.I. to have their children returned to one or the other of them.

[43] I find that efforts were made, and were continually made, by the Child Protection Worker to encourage, to assist, and to do whatever she could for B.S. and R.I., to encourage reunification of this family. Neither R.I. nor B.S. chose to follow through or take advantage of these efforts.

V. THE CHILD AND FAMILY SERVICES ACT

[44] Section 2 of the *Child and Family Services Act* states, in part, that the *Act* shall be administered and interpreted in accordance with the principle that *children are entitled to protection from abuse and harm and from the threat of abuse and harm*. And further that *parents are responsible to care and provide for and to supervise and protect their children*⁴. Those are important principles to keep in mind – both the right of all children, and the corresponding responsibility of all parents.

⁴ *Child and Family Services Act*, ss. 2(b) and 2(e), emphasis added

[45] As I stated earlier, it is conceded by all parties that these children are currently in need of protection. Neither R.I. nor B.S. is currently able to properly care for the children. I am satisfied that the children are in need of protection pursuant to s. 7(3)(r) of the *Act*; I am also satisfied with respect to R.I., that the children are in need of protection pursuant to s. 7(3)(k)⁵. I have reviewed the Plan of Care Report that has been filed.

[46] The treatment of the children by R.I. over the past 3 years, demonstrates to me that R.I. is clearly either unable or unwilling to properly care for his children, or make any attempts to re-unite with his children to develop and maintain a parent/child relationship. These are very young children whose father has chosen to come in and out of their lives at his convenience. He has chosen to allow others to be responsible to care and provide for and to supervise and protect his children.

[47] Parents have responsibilities, and if parents ignore their responsibilities harm will come to the child. R.I. has ignored his responsibilities as a parent, and has chosen to continue to ignore these responsibilities over the past 3 years that the children have been in care.

[48] In February, 2003, the children were found in need of protection, and placed in the temporary care of the Director. Nothing has changed since then. B.S. continues to see her children fairly regularly, but for three years, except for steps taken in the two weeks before this hearing was to commence, has done nothing to address the issues she needs to address to properly care for her children. Two weeks before this hearing she applied for an apartment; 4 days before the hearing, she secured employment.

⁵ 7(3) A child needs protection where

...

(k) the child has been exposed to repeated domestic violence by or towards a parent of the child and there is a substantial risk that the exposure will result in physical or emotional harm to the child and the child's parent fails or refuses to obtain services, treatment or healing processes to prevent the harm;

...

(r) the child's parent is unavailable or unable or unwilling to properly care for the child and the child's extended family has not made adequate provision for the child's care or custody;

[49] As I stated earlier, I do not accept that no efforts have been made by the Director to reunite the children with their parents. The parents have been encouraged, each of them stated that the Child Protection Worker and social services were of assistance to them, and each of them got along with the Child Protection Worker. Without some effort on the part of the parents, without some indication that there is a recognition or an understanding of a child's needs and rights, of a parent's duties and obligations, I do not see that any more could have been done for these parents. Having their children in foster care for 3 years has not provided any motivation for either of them to take some steps to have the children returned to their care. I do not believe that a court order will give either one of them any more motivation to improve their situation as parents. Both R.I. and B.S. continue to neglect important parenting responsibilities, or to take any steps necessary to enable either of them to accept parenting responsibilities.

[50] All children deserve to be a wanted and needed member of the family, in a loving, caring and stable environment. The pattern of both R.I.'s and B.S.'s behaviour shows an unacceptable lack of commitment towards developing a parent/child relationship with the children in order to enable the children to be wanted and needed members of a family unit.

[51] As I find that there has been no change in the parents' behaviours or attitudes towards the care of the children even up to the week before this hearing was concluded, I find that if the children were returned to either parent, there would be adverse effects, the children would continue to be placed at risk as there is no evidence that either parent has addressed their lack of parenting skills, nor secured, or even taken concrete steps to secure suitable housing. I find no evidence at all that either parent is prepared, available, able, or even willing, to properly care for the children, and therefore to return the children to either parent's care would definitely place the children at risk of physical or emotional harm.

VI. CONCLUSION

[52] I find that over the past 3 years, both parents have demonstrated that they are unable or unwilling to properly care for the children. Nothing on the evidence shows that the behaviours, or patterns of behaviour, of either parent have changed, nor has there been any demonstration that either of them is willing to act as a parent towards the children, i.e. to protect the children from abuse and harm and from the threat of abuse and harm, as all children are entitled to be, and to care and provide for and to supervise and protect their children, as all parents are obligated to do.

[53] Having found the children in need of protection, I have considered the options available under the *Act*. Both R.I. and B.S., through counsel, urge me to consider making a temporary custody order (s. 28(1)(c) of the *Act*) to be followed by a supervision order (s. 28(1)(b) of the *Act*).

[54] Upon considering and weighing all the evidence and the material that has been filed on consent on this hearing, I find that neither R.I. nor B.S. is ready or able to work with Social Services in establishing a parent/child relationship with the children. To make a temporary custody order would quite simply be exposing the children to further uncertainty in their lives. As Monnin, J.A. said in the *Children's Aid Society of Winnipeg v. C.A.R.* (1980) 19 R.F.L. (2d) 232, quoting the Chief Justice of Manitoba: "to give [these parents] another chance is to give these children one less chance in life." This is also the case here. It is not in the children's best interests to give them one less chance.

[55] Section 2(j) of the *Act* states: there should be no unreasonable delay in making or carrying out a decision affecting a child. I find that making a temporary custody order or a supervision order would not be in the best interest of the children, but would simply be delaying the permanency and security that these children, like all children, deserve in their lives.

[56] Whereas there may be a possibility that in the future, one or both of the parents may take steps to enable them to properly care for their children, at this point there is no evidence that this is likely to occur. Should both or either of the parents take the necessary steps to establish an environment in which they could properly care for their children, then either parent may bring an application under s. 49 of the *Act* to discharge the permanent custody order. But, again to delay the permanency and security that the children deserve just to see if the parents might take some steps is not in the best interests of these children.

[57] Therefore, the Director's Application for an order that the children be placed in the permanent custody of the Director is granted. The children will be placed in the permanent custody of the Director, and the parents shall have reasonable access to the children in the best interests of the children at the discretion of the Director.

Bernadette Schmaltz
J.T.C.

Dated this 22nd day of February, 2006, at
the Town of Hay River, Northwest Territories.

**IN THE TERRITORIAL COURT OF
THE
NORTHWEST TERRITORIES**

IN THE MATTER OF the *Child and
Family Services Act*, S.N.W.T., c. 13, as
amended;

AND IN THE MATTER OF the children,

S., (J.)

Born on January 25, 1999

S., (N.)

Born on September 7, 2000

APPREHENDED January 26, 2003

**REASONS FOR DECISION
of the
HONOURABLE JUDGE Bernadette
SCHMALTZ**
