In the matter of the children: A, B, C, and D, 2013 NWTTC 09

Date: 2013 04 22
File: T-1-CP-2009-000021

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the Child & Family Services Act,
S.N.W.T. 1997 c. 13, as amended,
AND IN THE MATTER OF the children,

A, B, C, and D

REASONS FOR DECISION
of the
HONOURABLE CHIEF JUDGE ROBERT D. GORIN

These Reasons are subject to Publication Restrictions pursuant to section 87 of the *Child and Family Services Act*, S.N.W.T. 1997, c.13, as amended

87. No person shall publish or make public information that has the effect of identifying
    (a) a child who is
        (i) the subject of the proceedings of a plan of care committee or a hearing under this Act, or
        (ii) a witness at a hearing; or
    (b) a parent of foster parent of a child referred to in paragraph (a) or a member of that child's family or extended family

And further . . .

90. Every person who contravenes a provision of this Act for which no specific punishment is provided is guilty of an offence and liable on summary conviction to a fine not exceeding $10,000, to imprisonment for a term not exceeding 12 months or to both.

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 at:	Inuvik, Northwest Territories January 21st, 22nd, and 23rd, 2013
Date of Decision:	May 6, 2013
Counsel for the Director:	Sheila M. MacPherson
Counsel for the Parents:	Candace Seddon

Date: 2013 04 22
File: T1-CP-2009-000021

IN THE MATTER OF the Child & Family Services Act,
S.N.W.T. 1997 c. 13, as amended,
AND IN THE MATTER OF the children,

A, B, C, and D

A. Introduction

[1] The Director of Child and Family Services has applied to have four children placed in its permanent care and custody. All four children have the same parents. However for the purpose of the within proceedings they can be divided into two groups. There are two boys, "A" and "B", who are twelve and seven years old, and two twin girls, "C and D, who are now well over two years old. These two sets of children have markedly different histories and were apprehended under different circumstances. In each case, the parents have opposed the Director's application.

[2] On January 23rd of this year, after hearing the evidence presented by the Director and the Parents and the submissions of counsel, I declared the two boys in need of protection but ordered that they be returned to their parents under a 6-month supervision order advising that my reasons would follow. I also declared the two girls in need of protection but reserved my decision on whether to grant the Director's application for permanent custody. The reasons for my decisions in both cases are set out in the paragraphs that follow.

B. Analysis

Hearsay Evidence

[3] The evidence was presented over a period of approximately two days. I will say at the outset that I have concerns with the nature of much of that evidence.

[4] The evidence presented by the Director included a great deal of hearsay. In particular, a large part of the evidence provided by the child protection worker, who currently has carriage of this matter, was hearsay. This observation should

not be interpreted as a criticism of the child protection worker in question. She was simply responding to questions that were put to her by counsel.

[5] It appears clear that hearsay evidence is admissible in the hearing of applications made under the *Child and Family Services Act* - even where the application is for a permanent care and custody order. Section 83(3) of the *Child and Family Services Ac*t provides:

> (3) An affidavit in support of an application or a proceeding may be based on information and belief.

[6] The within proceedings fall within the scopes of s. 83(3). The Act consistently refers to proceedings such as these as an *application*. There are no provisions that exclude applications for permanent custody from the operation of s. 83(3). Furthermore, while the Director's application is for a "permanent" order, the order is not final in that after a permanent care and custody order is made, the parents may still apply to this court for a discharge of the order. If affidavit material in these proceedings can be based on information and belief, it would follow that so too can *vive voce* evidence.

[7] However, there remains the question of the weight to be given to such evidence. Put simply, hearsay is as *an out of court statement offered in evidence to prove the truth of the matter asserted in the statement*. The problems associated with hearsay evidence have, of course, been the topic of countless decisions, texts and scholarly articles. The difficulties typically associated with reliability of hearsay evidence are:

1) The absence of the oath or affirmation;

2) The absence of any observation of demeanor;

3) The indirect narration or transmission; and

4) The absence of cross examination.

[8] Due in large part to these reliability concerns, hearsay evidence is presumptively inadmissible in most court proceedings. However, the presumption may be overcome where the hearsay evidence is sufficiently reliable and necessary. A *voir dire* will generally be necessary in order to determine whether or not the hearsay is admissible.

[9] As stated, the hearsay rule does not apply to the present proceedings. However, even in proceedings in which the hearsay rule does not apply, the

reliability concerns I have referenced may have considerable impact when determining what weight to give the out of court statement.

[10] Concerns with reliability may be met through circumstantial indicia of trustworthiness surrounding the making of the statement and/or confirmatory evidence. However, in the case before me a significant amount of the hearsay evidence I heard from the Director's witnesses was second-hand. In other words, the witness was describing what someone else had told her about what yet another person had said. There were also instances, such as when the expert witness called by the Director described a statement given by the mother concerning the father's violence towards the boys, where it was quite unclear whether the mother's statement was based on her own observations or what she had been told by someone else. In such instances it is difficult for me to give much weight to the evidence. The same difficulty occurs when witnesses are asked about their understanding of a relevant fact without providing the basis for that understanding.

[11] In this case none of the children testified and a large number of their out of court statements were adduced by the Director. I certainly do not criticize counsel for the Director for not calling the children to testify. Obviously the two girls are too young and testifying would have been a very difficult experience for both of the boys. However, their difficulty in testifying does not affect the reliability of their hearsay statements one way or the other.

[12] In some instances, where the hearsay evidence of one of the children conflicts with that of the parents' evidence, counsel for the Director asks that I consider as confirmatory the fact that the child made similar statements at different times to other people. I am unable to accept this submission. While, the hearsay rule does not apply in these proceedings, other rules of evidence do. One such rule is the rule against using prior consistent statements of a witness to bolster his testimony. The trier of fact is not permitted to consider the similarity between a witness' testimony and statements he has made to others on past occasions as confirmatory of the testimony. It would otherwise be open to a witness to bolster his testimony by stating its content to others prior to coming to court. I think that the rule against prior consistent statements must also apply to hearsay statements in cases where hearsay is admissible. One out of court statement should not be corroborated by another similar out of court statement made by the same declarant.

[13] Having said that, I found some of the hearsay presented to be quite reliable. Some of it was properly confirmed by other evidence. Some hearsay statements were the same as other out of court statements made by *other* individuals. Some of the hearsay would have fallen into traditional exceptions to the rule. For example

there were a number of admissions and declarations against interest made by the parents.

Chronology

[14] To a considerable extent the history of this matter is not contentious. The mother, "M", has had involvement with the Director of Child and Family Services since 2002 as a result of concerns with her parenting. Of particular importance, M committed two assaults on children in her care in 2008. M was first charged with assaulting her son A, the oldest son in the within proceedings. M confirms that she in fact committed this assault, although I am unaware as to its details. In 2008 the mother also assaulted her nephew, "E", who was living with her at the time. The assault was serious and E was found with extensive bruising after he had been kicked, struck, and scratched by M.

[15] M was charged and ultimately convicted of the assault on E. She was sentenced to jail and released after serving 8 months. At the time she was sentenced she was also placed on a 24-month probation order that followed her release from jail. The probation order required that she have no unsupervised contact with a child under the age of 12 years. From the evidence I have heard, it would appear that the probation order expired in May of 2012.

[16] After the mother was incarcerated, the two boys, A and B, went to live with their father, "F", in Aklavik. The father entered into a plan of care agreement with the Director of Child and Family Services. Soon after, concerns arose as a result of the father moving to Tuktoyaktuk with the children and not informing the Director. The Director located the boys at the home of M's sister. A new plan of care agreement was entered into with the Director for a period of 6 months. Areas of concern identified were F's lack of supervision over the children, substance abuse, and limited parenting skills.

[17] Soon after, A reported that F had hit him and a further plan of care was entered into. By March of 2009 the two boys and F had returned to Aklavik. Shortly after, the child protection worker received a report that F had been physically disciplining the two boys and that they had attempted to walk from Aklavik to Tuktoyaktuk. The Director concluded that they had attempted to run away in order to avoid the physical discipline.

[18] In September of 2009, the child protection worker interviewed the two boys. A advised her that his father had hit him on several occasions when he had been consuming alcohol and showed her bruises which he said had occurred as a result. A indicated that he was afraid and did not want to go home. The child protection

worker also interviewed B. B did not advise her of any incidents of physical discipline.

[19] The child protection worker then interviewed F, who admitted that he had hit the children but that it had been only for the purpose of correcting their behaviour. In his testimony before this court the father also admitted that he had used corporal punishment by spanking the boys on their bottoms. At this juncture I will note that based on all of the evidence that has been presented, I am unable to conclude that it has been established that the father in fact physically abused either of the boys in the manner alleged. The same goes for other statements provided to the foster parents and to Dr. "X" concerning acts of violence on the part of the father where they are denied by the father.

[20] The Director apprehended the children and sought a temporary custody order, which apparently F did not oppose. The boys were placed in a foster home in Tuktoyaktuk. Although he was offered the opportunity, F did not visit A and B until 2011. F contends that he did not visit his sons because he found it too painful to do so. Visits at the foster home were offered to F. However, while such visits were often arranged, F would usually not attend them.

[21] According to the evidence I heard, when the boys were apprehended in the fall of 2009 the mother was still incarcerated. As stated, when she was released, she was subject to a two year probation order that required she have no unsupervised contact with children less than 12 years of age. At the time of her release, her relationship with F had ended and she resided with her sister. However, prior to her incarceration she had become pregnant with the twins, C and D, of whom F was the father. They were born on July 31st, 2010 following her release from jail. (I recognize that the birthdate seems odd given the timeline, but that is the evidence before me.) In any event, the twins were apprehended immediately following their birth due to the terms of the probation order which bound M and F's past difficulties in caring for the boys.

[22] Unfortunately, a placement in Tuktoyaktuk was impossible and the two girls were placed in a foster home in Fort MacPherson. I will pause to note that both parents are of Inuvialuit descent. The population of Tuktoyaktuk is predominantly Inuvialuit. Fort MacPherson is a considerable distance away from Tuktoyaktuk and is predominantly Gwich'in. The cultural differences between the Inuvialuit, who are part of the Inuit peoples, and the Gwich'in, who are a First Nations people, are considerable.

[23] M and F eventually began cohabiting again and the Director initiated steps to reunite the parents with their children. The plan proposed was that the boys

would be returned to their parents and that if that were successful, reunification with the girls would be attempted. A parental assessment was carried out by Dr. X. Dr. X conducted a number of psychometric tests on both the parents and the boys. Following his assessment, Dr. X indicated to the Director that he was opposed to further attempts at reunification.

[24] Nevertheless, in November of 2011, the boys were returned to their parents under a six-month supervision order. In December of 2011, the child protection worker received a report that the parents had been fighting with each other and that the father had asked the two boys to leave the house. The report indicated that the two boys were outside for a long time and were cold. Apparently the source of the information was B, who advised a teacher who then advised the child protection worker who had assumed carriage of the matter, "Y". The parents in their testimony admitted this occurrence. F stated that he asked the boys to leave the home so that they would not see the argument between himself and M.

[25] The report concerned Y because one of the conditions in the plan of care stated that the children were not to be exposed to any violence whatsoever. The father advised her that there was no physical violence, simply an argument on how to parent the two children.

[26] Shortly afterwards, the child protection worker received a report that the parents were fighting and that M had pushed F into a bathtub where he had fallen and hit his head on a tap. When he was interviewed immediately following the incident, A indicated that he had seen M push F. B indicated that he was afraid. In their testimony both parents admitted this incident. Any difference in their respective versions of events is minor. Following the incident, Y worker again encouraged the parents to resolve their difference without violence or arguments and the children were left in the custody of their parents.

[27] On April 30th, 2012, the child protection worker received a report from the R.C.M.P. that on the preceding evening there had been an altercation between F and M at their home. The report she received was that F had pushed M down some stairs and that she had fallen on her behind.

[28] Y interviewed both parents. She testified that M said that there was an argument over the children and that F pushed her and that she fell on a landing in front of the porch. F told the child protection worker that he was concerned about the fact that he had lost sight of B while he was playing outside. He had told B not to wander too far due to the presence of coyotes in the community and that when he lost sight of him, he panicked. He brought B home. M thought he was pushing B too hard, and an argument between the two of them erupted. F pushed M during

the argument and pushed B out of the way when he got in between them, causing him to fall.

[29] The two boys were apprehended and placed in the same foster home they had previously lived in. The Director then determined that it would apply for a permanent custody order for all four children.

[30] By all accounts both sets of the children have been doing well in their respective foster homes. I have heard the testimony from both foster mothers. Based on the evidence I have heard, it is very apparent that all of foster parents have been doing a remarkable job in caring for the children. I have listened carefully to their evidence respecting their observations of the children while they have been in foster care and the parents' interaction with the children. I note that over the past year, the parents have visited the two girls on only three occasions.

Dr. X's Expert Opinion Evidence

[31] Dr. X was, as agreed to by counsel, qualified as an expert in the area of psychology and psychological assessment. Doctor X carried out a number of psychometric measures of the parents in the areas of: mental health; mental disorders; personality function; parenting attitudes, beliefs and understanding of child development. He conducted observations of the parents' interactions with the children. He tested each parent's I.Q. He also conducted psychometric testing on the boys. He testified that both parents had very low intelligence based on the results of the I.Q. tests they had taken. He conceded that they had both made considerable effort in addressing their past problems and had progressed appreciably. However, he also opined that their levels of intelligence were so low that it was unlikely that they would make the progress necessary to be fit parents.

[32] When questioned on the point, Dr. X acknowledged that significant differences between the culture of the person being tested and the culture of the population used to norm the I.Q. test could lead to an inaccurate lowering of the overall score. In the present case, both parents are Inuvialuit and lead traditional lifestyles. Dr. X speculated that Inuvialuit people may have participated in the norming of the test he used to assess the parents. At one point, Dr. X surmised, that because the tests were normed using the general Canadian population, there would have been a proportional number of Inuvialuit people in the sample group. However, he ultimately conceded that he could not really say whether or not this was the case. Furthermore, even if I were to accept that the proportion of Inuvialuit people used to norm the test mirrored their representation in Canada's general population, their number would be far too small to have real impact on the test's standardization.

[33] I am prepared to take judicial notice of the fact that the Inuvialuit culture as it exists in communities such as Tuktoyaktuk is markedly different from that of mainstream Canada. After considering all of the evidence presented, I think that the parents, in particular the mother, likely suffer from some significant cognitive deficit. However, given the cultural differences I have noted, I have considerable difficulty with the accuracy of the intelligence measures presented in Dr. X's evidence.

[34] Dr. X also conducted personality testing on the parents. At one point in his testimony Dr. X conceded that the results of all of the standardized tests he conducted could be somewhat skewed, although later on in his testimony he testified that this possibility was not as strong outside the area of intelligence testing.

[35] Dr. X testified that the results of the Minnesota Multiphasic Personality Inventory carried out on both parents were invalid due to inconsistent responding. One of the other psychometric measures of M was also invalid for the same reason. Dr. X indicated that the parents were not simply responding randomly and that they cooperated and participated well throughout their entire interactions with him. He thought that the invalid results may well have been due to them being "in crisis" or "overwhelmed". He testified that if they were in fact in crisis or feeling anxious, the accuracy of the other standardized tests that he conducted would be lessened. At one point in his testimony Dr. X stated that there were times when he was able to detect anxiety on the mother's part during the personality testing. He also testified that he took some steps to deal with possible anxiety on the part of both parents. However, I am uncertain as to what degree those steps were successful. Consequently, I find accuracy of the psychometric measures to be open to question.

[36] I had great difficulty with other aspects of Dr. X's assessment of M. He testified that there was a conflict between the attitudes which M had expressed to him and her past actions. He testified that M's aversion to violence towards children as disclosed in the "Adult Adolescent Parenting Inventory" ("AAPI") he conducted were contradicted by her past actions, referring to assaults on A and E in 2008. He therefore questioned whether she genuinely held the attitude she expressed. However, it is important to note that M had expressed her attitudes to Dr. X in 2011. The violence against the children occurred in 2008. She has since taken considerable counseling in the area of violence management and substance abuse. She has expressed great remorse. She has testified that she will never forgive herself for what she did to A and E. There is no evidence that she has used violence against a child since she assaulted E. Dr. X ultimately conceded that her present attitude was consistent with a change of behavior. I find I am unable to

accept Dr. X's opinion that M's aversion to violence against children is questionable.

[37] There was one portion of Dr. X's evidence in particular, which caused me to have strong concerns with his objectivity. While being cross-examined, Dr. X referred to a further conflict between the results of the AAPI test conducted on M and another measure called the "Child Abuse Potential Inventory". He stated:

> A: So on the AAPI we don't have concerns. Her attitudes and beliefs are appropriate within that medium risk range in terms of using corporal punishment, but then we have that significant elevation on the Child Abuse Potential Inventory …

[38] Soon after he said this, the following exchange took place between counsel for the parents and Dr. X:

> Q: So you have the two inconsistent test results, and you are choosing the one that fits with the rest of your case?
>
> A: I am choosing the one that places the child at most risk. That is the one I am choosing because it is an assessment of risk factors for the child. My focus is on what is in the best interest of the child because the child is the most vulnerable. That is why I am focusing on the child. So if a risk factor for a child is a parent's attitude and belief about the use of physical discipline, then I am going to identify that.

[39] Dr. X's evidence is that where two tests have differing results, the result that is consistent with the child being at higher risk should be accepted. He seems to be saying that because he has the best interests of the children at heart, he must choose the more negative result. Another way of putting his testimony would be that where there is a conflict in the evidence he must err on the side of the children's safety when determining what evidence to accept. There were other parts of his testimony where this theme was repeated. At one point he speculated on the possibility of broken bones or other injuries occurring if the children were returned to their biological parents.

[40] Evidence must be interpreted in an impartial and neutral manner. At the end of the day when determining what orders are to be made, the best interests of the children must be the court's only consideration. However, that cannot require that each piece of evidence must be interpreted in a manner that favours the children being placed in the Director's care and custody.

[41] Dr. X's position on how differing test results should be approached causes me concern as to the objectivity of his interpretation of the particular test results he was referencing. Moreover, it causes me a certain amount of concern with the objectivity of his evidence generally.

[42] *Alfano v. Piersanti*, 2012 ONCA 297, is a case dealing with the need for impartiality on the part of expert witnesses. The following excerpt is helpful:

> **103** Expert evidence is an exception to the general rule barring opinion evidence. In *R. v. Mohan*, [1994] 2 S.C.R. 9, the Supreme Court of Canada set out the four criteria for the admissibility of expert evidence: 1) relevance, 2) necessity in assisting the trier of fact, 3) the absence of any exclusionary rule, and 4) proper qualification. The party tendering expert evidence has the burden to satisfy the four *Mohan* criteria on a balance of probabilities.
>
> **104** In discussing the second criterion at pp. 23, 24 of *Mohan*, the Supreme Court referred to the concept of helpfulness to a trier of fact. The court concluded that the appropriate test for necessity is whether the expert is capable of assisting the trier by providing information likely to be beyond the trier's knowledge and experience.
>
> **105** In determining whether an expert's evidence will be helpful, a court will, as a matter of common sense, look to the question of the expert's independence or objectivity. A biased expert is unlikely to provide useful assistance.
>
> **106** Courts have taken a pragmatic approach to the issue of the independence of expert witnesses. They have recognized and accepted that experts are called by one party in an adversarial proceeding and are generally paid by that party to prepare a report and to testify. The alignment of interest of an expert with the retaining party is not, in and of itself, a matter that will necessarily encroach upon the independence or objectivity of the expert's evidence.
>
> **107** That said, courts remain concerned that expert witnesses render opinions that are the product of their expertise and experience and, importantly, their independent analysis and assessment. Courts rely on expert witnesses to approach their tasks with objectivity and integrity. As Farley J. said in *Bank of Montreal v. Citak*, [2001] O.J. No. 1096 , "experts must be neutral and objective [and], to the extent they are not, they are not properly qualified to give expert opinions."
>
> **108** When courts have discussed the need for the independence of expert witnesses, they often have said that experts should not become advocates for the party or the positions of the party by whom they have been retained. It is not helpful to a court to have an expert simply parrot the position of the retaining client. Courts require more. The critical distinction is that the expert opinion should always be the result of the expert's independent analysis and conclusion. While the opinion may support the client's position, it should not be influenced as to form or content by the exigencies of the litigation or by pressure from the client. An expert's report or evidence should not be a platform from which to argue the client's case. As the trial judge in this case

> pointed out, "the fundamental principle in cases involving qualifications of experts is that the expert, although retained by the clients, assists the court."
>
> **109** The report of the Goudge Inquiry, *Inquiry into Pediatric Forensic Pathology in Ontario* (Toronto: Ontario Ministry of the Attorney General: 2008), at p. 503, noted the importance of expert witness independence, quoting the principles described by the Court of Appeal of England and Wales in *R. v. Harris and others*, [2005] EWCA Crim 1980, at para. 271:
>
> > (1) Expert evidence presented to the court should be and seen to be the independent product of the expert uninfluenced as to form or content by the exigencies of litigation.
> > (2) An expert witness should provide independent assistance to the court by way of objective unbiased opinion in relation to matters within his expertise. An expert witness in the High Court should never assume the role of advocate.

[43] I do not necessarily believe that Dr. X was colouring his testimony to support the Director's position. He appears to have had the best interests of the children at heart. Nevertheless, his stated approach to interpreting the results of the tests he administered is dubious and calls into question his general objectivity.

[44] As further stated by the Ontario Court of Appeal in *Alfano* at paragraph 110:

> **110** In most cases, the issue of whether an expert lacks independence or objectivity is addressed as a matter of weight to be attached to the expert's evidence rather than as a matter of the admissibility. Typically, when such an attack is mounted, the court will admit the evidence and weigh it in light of the independence concerns. Generally, admitting the evidence will not only be the path of least resistance, but also accord with common sense and efficiency.

[45] I find the approach set out in the foregoing excerpt to be appropriate in this case. Dr. X was qualified on the consent of both parents to give his expert opinion evidence. There was no attack on Dr. X's objectivity during the *voir dire* itself. The evidence was admitted and therefore I have considered it in determining the outcome of these proceedings. That said, due to the concerns I have about his objectivity, I have not given his expert opinion evidence great weight.

[46] There were aspects of Dr. X's evidence that fall outside the area of expert opinion evidence. I have no difficulty accepting his testimony that M made statements to him about violence she had used against A and other children in her care. Once again however, the violence described occurred long before M's rehabilitative efforts commenced. I accept that she told him about certain violence she said F had carried out against the boys. However, it is unclear to me whether

she observed the violence or whether it was in respect of something that occurred while she was incarcerated and had heard of from another person.

Submissions of Counsel

[47] I thank both counsel for their considerable assistance in this matter. However, for future reference I think it worthwhile to call attention to some of the Director's submissions. Counsel for the Director repeatedly phrased her submissions in terms of her own personal opinions, views or impressions. Counsel certainly can and should make detailed submissions on issues relevant to the court's determination. Doing so greatly assists the court. However, the fact that counsel may hold a given opinion is wholly inconsequential to the court's determination. In arriving at my decisions in this matter, I have certainly given consideration to counsels' submissions - but not to any personal opinions offered.

C. Conclusion

[48] In respect of the two boys, I'm largely in agreement with the submissions presented by counsel for the parents. F and M have certainly not been perfect parents in the past. They are still not perfect parents. However, they have acknowledged their deficiencies and have worked hard to resolve the issues that led to the children being taken away from them. Clearly, M committed serious acts of violence against children in her care in the past. However, those incidents occurred in 2008 and it is now 2013. It has not been established or even alleged that she has committed any act of violence against a child since that time. She appears to have learned from her errors, taken the counseling, and made the changes in her life that are required to ensure that her conduct does not repeat itself. There was a relatively recent incident where she used physical force against F. She argued with him and pushed him causing him to fall and hit his head. But other than that there has been nothing. When it comes to violence against children she appears to have learned her lesson. In fact one of the spousal altercations I have heard about occurred when M objected to the way F was pushing B into the house after F became alarmed about B's safety. As well, there appears to be no current problem with alcohol abuse on her part.

[49] F has certainly had problems parenting the boys when he was on his own after M went to jail. However, as I have stated, I am unable to find on a balance of probabilities that the more serious physical abuse he is alleged to have committed actually occurred. Moreover, the alleged incidents are said to have occurred in 2009. I heard about only two recent situations where he used physical force on the boys. During one occurrence F pushed B home forcefully after he had disobeyed

F's instructions and placed himself in a situation that F thought dangerous. There was also the incident where he pushed B aside causing him to fall down when B got in between his parents while they were arguing. F then pushed M while she was on the porch, causing her to fall down. In finding the facts of this incident, I accept the evidence of M. Her version certainly does not depict F or herself as being blameless and given the nature of the within proceedings she has no reason to fabricate this version of events.

[50] While I conclude that there are concerns that are sufficient to require that I declare both A and B in need of protection, I find that the Director has not established that a further order placing the boys in the care and custody of the Director, on either a permanent or temporary basis, is necessary. Counsel for the Director concedes that the more recent difficulties which arose after the boys were placed back with their parents were "on the low end of family dysfunction". In determining their best interests, I have considered all of the factors set out in s. 3 of the *Child and Family Services Act.* Although certainly not determinative in and of itself, I have considered the evidence that it is the wish of both boys that they be returned to their parents.

[51] I find that it is in their best interests to be returned to their parents subject to the supervision order that I have already imposed. The foster parents have done an excellent job in caring for the boys and attending to their needs. However, while there have certainly been times in the past when F and M have not been good parents, I find that they have made progress that is substantial. Although I still have concerns, I find that placing both of the boys back in their parents' care and custody is a more positive outcome than their continued institutionalization. The parents have progressed considerably and it is my hope that they continue to progress in the future.

[52] I will next deal with the twin girls, C and D. Upon review of the evidence and the submissions of counsel, I have come to the view that there must be an order placing them in the permanent care and custody of the Director. I am also ordering that both parents have generous access to the children up until such time as the children are placed for adoption.

[53] C and D were apprehended on the day they were born. Since that time they have been with the same foster parents located in Fort McPherson. They are almost three years of age. Immediately following their apprehension it may have been desirable for them to have been placed in Tuktoyaktuk or another Inuvialuit community. However, it appears that doing so was not feasible.

[54] The circumstances that led to their apprehension and the succession of temporary care and custody orders granted to the Director are very sad. However, I think that the answer to the ultimate question I must answer is clear. By all accounts the children have been thriving in their present home. The foster mother is willing to adopt them, so there is the very real prospect of them being raised in the same home from birth to adulthood.

[55] Unlike A and B, C and D have only lived in one home and have had somewhat limited contact with their biological parents and siblings. During the last year, the parents' visits have been few and far between. Once again, I have considered all of the factors set out in s. 3 of the Act when determining both of the girls' best interests. However, at this stage of their development, the need for continuity is extremely important and must not be interrupted. Removing them from their lifelong home would be extremely distressing with or without a transition plan.

[56] In the case of C and D, I am no longer able to impose a temporary custody order. According to the provisions of the *Act*, a temporary custody order may not be imposed where such an order would result in a child being in the Director's custody for a consecutive period of more than two years. The choice therefore is a permanent care and custody order or no further care and custody. The policy reason behind the rule is self-evident. In order to thrive, children require stability in their parenting and their environment. Even if I were not statutorily prohibited from making a further temporary care and custody order, I would make the same order I am making today.

[57] I wish to commend both parents for the progress they have made. I also commend the child protection worker who currently has carriage of this matter. She has had to make some difficult choices as has the Director.

[58] Finally, I acknowledge the outstanding contribution of each of the foster parents who have cared for both sets of children. Their commitment to the welfare of the children has been abundantly clear throughout these proceedings. The foster mother of C and D has indicated a strong desire to adopt them. Hopefully the necessary proceedings will be initiated in the near future. I also hope that she continues to allow and encourage contact between the twins and their biological parents. As she stated in her testimony:

> "…it is healthy for a child to know where they came from. They need to know the truth. They need to know their history."

ORIGINAL SIGNED

Robert D. Gorin
C. J.T.C.

Dated at Yellowknife, Northwest Territories, this 22nd day of April, 2013.

In the matter of children: A, B, C, and D, 2013 NWTTC 09

Date: 2013 04 22
File: T-1-CP-2009-000021

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

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

AND IN THE MATTER OF the children,

A, B, C, and D

REASONS FOR DECISION
of the
HONOURABLE CHIEF JUDGE ROBERT D. GORIN

These Reasons are subject to Publication Restrictions pursuant to section 87 of the *Child and Family Services Act*, S.N.W.T. 1997, c.13, as amended