

Re: H.B., 2015 NWTC 22

T-1-CP-2013-000012

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 child,

H.B.

Born: November 25, 2012

Transcript of the Reasons for Decision by The Honourable
Judge G. E. Malakoe, at Inuvik in the Northwest
Territories, on October 10, 2014.

APPEARANCES

Ms. A. Groothius: Counsel for the Director
Ms. J. Savoie: Counsel for the Parents

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 or 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.

A.C.E Reporting Services Inc.

1 Proceedings taken at Territorial Court in Inuvik,
2 Northwest Territories

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4 THE COURT: Good morning, counsel.

5 Ms. Savoie, I note that J.B. is not here.

6 MS. SAVOIE: Yes, he's not here, Your
7 Honour. He had to go back to work this morning.

8 THE COURT: Okay. You are prepared to
9 proceed without him?

10 MS. SAVOIE: Yes, we are, Your Honour.

11 THE COURT: By way of preamble, I'm going
12 to give my reasons today orally because I feel
13 that a decision should be communicated as soon as
14 possible and while the Court is still in Inuvik.
15 Although I'm confident in my decision and in the
16 decision-making, it will not be expressed as well
17 as it would have had I had more than overnight to
18 write the decision. Accordingly, if a transcript
19 is ordered, I will reserve the right to make
20 stylistic and other changes.

21 Introduction.

22 This is an application by the Director of
23 Child and Family Services, whom I will call the
24 Director, seeking an order to have the child H.B.
25 declared to be in need of protection and to have
26 him placed in the permanent custody of the
27 Director, as those terms are defined in the Child

1 and Family Services Act.

2 Factual Outline.

3 H.B. was born on November 25, 2012. At the
4 time of this hearing, he was a month and a half
5 away from his second birthday. He has been in
6 the care of the Director since May 28, 2013, when
7 he was apprehended for the third time. The
8 previous apprehensions on December 15th, 2012,
9 and February 28, 2013, were 72-hour apprehensions
10 which resulted in plan of care agreements.

11 H.B.'s parents are T.R., who is 39, and
12 J.B., who is 30 years old. All three
13 apprehensions involved a situation where the
14 parents were intoxicated and there was no sober
15 caregiver to look after H.B. On September 9,
16 2013, H.B. was declared in need of protection and
17 placed in the temporary custody of the Director
18 for a period of six months. On February 25,
19 2014, the Director applied for an order declaring
20 H.B. to be in need of protection and placing him
21 in the permanent custody of the Director. This
22 is the hearing of that application. This
23 application is opposed by the parents who ask the
24 Court to impose a six-month temporary custody
25 order.

26 The Director takes the position that T.R.
27 and J.B. continue to struggle with issues of

1 homelessness, lack of income, lack of parenting
2 skills and alcohol usage. The Director also says
3 that they have not done anything significant to
4 address their alcohol usage and lack of parenting
5 skills, or any of the issues that infringe on the
6 safety of their son.

7 Decision.

8 For the reasons which I will state in this
9 decision, I have found that H.B. is in need of
10 protection within the meaning of Section 7(3)(r)
11 of the Act which states that a child is in need
12 of protection if the child's parent is
13 unavailable or unwilling to properly care for the
14 child and the child's extended family has not
15 made adequate provision for the child's care and
16 custody. Further, I decline to make a permanent
17 custody order and instead make a six-month
18 custody child protection order pursuant to
19 Section 28(1)(c) of the Act. The reasons for
20 this decision are as follows:

21 The hearing.

22 At the beginning of the hearing, a 265-page
23 document was submitted to the Court on consent by
24 both parties. It consisted of the following: (1)
25 Application For Permanent Custody Order
26 consisting of Notice of Motion, Affidavit of
27 Lawrence Chukwu, and the Supplementary Affidavit

1 of Zoila Castillo; (2) live registration of birth
2 for H.B.; (3) plan of care agreements and
3 pleadings; (4) Court orders; (5) documents
4 regarding programs taken by parents; (6) child
5 protection investigation reports; and (7) child
6 protection case note reports.

7 Three witnesses were called on behalf of the
8 Director: Zoila Castillo, child protection
9 supervisor; Lawrence Chukwu, child protection
10 worker; and D.R., foster mother to H.B. The
11 parents called two witnesses: T.R., the mother of
12 H.B.; and L.R., the wife of M.R., who is a cousin
13 of T.R.

14 Section 80 of the Act allows for the use of
15 affidavits in a proceeding such as the one before
16 the Court. These affidavits can be based on
17 information and belief. The pleadings include
18 affidavits of Zoila Castillo, Lawrence Chukwu,
19 and Karen English. Ms. Castillo and Mr. Chukwu
20 testified before the Court; Ms. English did not.
21 Counsel agreed that I shall make findings of fact
22 based on the affidavits, the submitted business
23 records, and the viva voce evidence.

24 The documents contained in Exhibit 1, other
25 than pleadings, were submitted as business
26 records of the Director. Counsel for the parents
27 did not take exception to this, however, submit

1 that the Court should use caution in accepting
2 them for the truth of their contents on
3 controversial issues. I agree with this caution.

4 T.R. and J.B. both attended the hearing.
5 T.R. was supported by L.R., J.B. was supported by
6 his father C.B. Initially, all four individuals
7 sat in the body of the courtroom. During the
8 first day, T.R. moved and sat beside her legal
9 counsel for the rest of the hearing.

10 Relevant Law.

11 I will deal initially with the Child and
12 Family Services Act. Before a Court can grant a
13 permanent custody order, it must first find the
14 child to be in need of protection. Section 7
15 sets out the various manners in which a child can
16 be found in need of protection. In this case,
17 the Director is relying on sections 7(3)(i) and
18 (r) which state:

19 A child needs protection where:

20 (i) the child has been subject to a pattern
21 of neglect and there is a substantial risk that
22 the pattern of neglect will result in physical or
23 emotional harm to the child;

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

1 custody.

2 If the Court finds that the child is in need
3 of protection, the options are set out in section
4 28 of the Act. For the purposes of this hearing,
5 sections 28(1)(c) and 28(1)(d) are relevant.
6 They allow for a temporary custody order for a
7 specific period not exceeding 12 months and a
8 permanent custody order. In these orders, the
9 Court may specify any terms and conditions that
10 the Court considers necessary and proper, and
11 that the child's parent or the person having
12 actual care of the child be granted access to the
13 child on the terms and conditions that the Court
14 considers appropriate.

15 Pursuant to section 28(10) of the Act, the
16 child may not be in the temporary custody of the
17 Director for a continuous period exceeding 24
18 months. For H.B., that 24-month period ends on
19 September 8th, 2015.

20 Temporary Versus Permanent Custody.

21 Counsel for both parties agree that the test
22 in deciding whether or not an order of temporary
23 versus permanent custody is the test stated in
24 Re: S.S. and H.S., 2011 NWTC 12. In paragraph
25 41, the Court states:

26

27 In my view, the test that I

1 should apply in deciding
2 between a temporary versus
3 permanent custody order is as
4 follows: Is there a
5 substantial likelihood that
6 within a reasonable time
7 period from the date of making
8 the child protection order
9 either or both the parents
10 will be in a position to
11 provide sustained adequate
12 care for the children?

13
14 Counsel have also submitted Re: J.S., 2006
15 NWTC 02 and Re: N., (R.G.), 2008 NWTC 16, which I
16 have considered.

17 Summary of Evidence.

18 The following is a summary of the evidence
19 given by each of the witnesses:

20 Zoila Castillo.

21 Ms. Castillo is the senior social worker for
22 the Inuvik and high arctic region. She has been
23 in Inuvik for five years. For the first two and
24 a half years, she was a front-line child
25 protection worker, the second two and a half
26 years the senior social worker and supervisor.
27 Prior to her employment in Inuvik, she had been a

1 child protection worker in B.C. for two years.
2 She has a Bachelor of Arts in Psychology and
3 English. As the senior social worker, she is
4 responsible to provide direction and consultation
5 to front-line child protection workers, support
6 and mentoring and case management decisions. She
7 was first involved with the H.B. file in December
8 of 2012 as the supervisor for the child
9 protection worker Karen English when she was
10 informed of the first apprehension. Karen
11 English was the child protection worker on this
12 file until August of 2013. Solange Cormier was
13 the child protection worker until December of
14 2013 and Lawrence Chukwu became the child
15 protection worker in December of 2013.

16 Ms. Castillo testified about her knowledge
17 of T.R.'s five other children and the
18 apprehensions of H.B. on December 15th, 2012,
19 February 28, 2013, and May 25, 2013. She
20 explained the terms of the plan of care
21 agreements. As part of the modification to the
22 plan of care agreement signed on March 1, 2013,
23 T.R. and J.B. were to access the parenting
24 support program at the Inuvialuit Regional
25 Corporation and to attend the Matrix program at
26 the Inuvik Community Counselling Centre.

27 Ms. Castillo described the office visit between

1 the parents and Solange Cormier on September 9th,
2 2013, after the Court had granted the six-month
3 temporary custody order. The possibility of the
4 Director applying for a permanent order after six
5 months, if there was not significant positive
6 change with the family situation, was discussed.
7 Ms. Cormier provided the parents with a
8 homelessness application which could be used to
9 apply for funding to pay off their arrears for
10 housing.

11 According to Ms. Castillo, T.R. enrolled in
12 the Matrix program which started in September of
13 2013 but attended sporadically - 10 out of 20
14 sessions. J.B. did not enrol. J.B. and T.R.
15 completed five sessions of the IRC parenting
16 program. According to the report on this
17 program, "They were both engaged in the activity
18 and conversation." The documentation shows that
19 T.R. and J.B. did not maintain sobriety. There
20 is a case note from October 2nd, 2013, which
21 indicates they missed a visit because they were
22 drinking. They also acknowledge that they had
23 not returned the homelessness application to
24 social services nor did they submit it.

25 In her testimony, Zoila Castillo adopted the
26 information she provided in her affidavit sworn
27 March 24, 2014, which set out historical file

1 information about T.R.'s other children.
2 Ms. Castillo explained why the Director decided
3 to seek a permanent custody order, essentially
4 because of the reasons set out in paragraph 18 of
5 the affidavit:

6
7 "That neither T.R. nor J.B.
8 have demonstrated any effort
9 to address the issues that led
10 to their child H.B. being in
11 care. There had been no clear
12 plan formulated between the
13 biological parents and the
14 social worker as the parents
15 have not maintained contact,
16 nor have they achieved
17 consistent visitation with
18 H.B. There continues to be
19 several concerns such as
20 continued alcohol and drug
21 use, a lack of a stable home,
22 a lack of stable income, and a
23 lack of involvement in their
24 son's wellbeing."

25
26 As justification for this assertion,
27 Ms. Castillo stated that the parents had been

1 offered a lot of support (resources and referrals
2 to different programs) in an attempt to help with
3 their homelessness and the offer of regular
4 visitation. The programs included the
5 Homelessness Assistance Fund, searching for them
6 to speak with their lawyer, and referrals to the
7 Matrix and Parenting Programs. The parents did
8 not complete the Matrix program or apply to the
9 Homelessness Assistance Fund. The parents were
10 sporadic in their access and in their contact
11 with the child protection worker.

12 Ms. Castillo acknowledged that when the
13 parents visited in 2014 the visits were good and
14 the parents were very appropriate with H.B.
15 Ms. Castillo testified that H.B. was doing well
16 in his placement and meeting his developmental
17 milestones. He was a happy child who was doing
18 great. With respect to maintaining his
19 aboriginal culture, Ms. Castillo acknowledged
20 that H.B. was not in an aboriginal foster home
21 but with foster parents who have fostered
22 aboriginal children before. When the Department
23 becomes aware of aboriginal events, they pass the
24 information onto the foster parents with the
25 expectation that they will participate where
26 appropriate.

27 Ms. Castillo acknowledges that there was no

1 direct evidence of current drug use by the
2 parents and the Director was concerned about the
3 parents' use of alcohol primarily.

4 Lawrence Chukwu.

5 Mr. Chukwu became the child protection
6 worker for H.B. in December of 2013, although he
7 had one prior involvement as an investigating
8 child protection worker. Mr. Chukwu has been a
9 child protection worker in Inuvik since September
10 of 2008. Prior to that, he was a child
11 protection worker for two years in Saskatchewan.
12 He has a Masters in Social Work from the
13 University of Calgary. When he received this
14 file, he obtained a case summary from Solange
15 Cormier. He did not have the opportunity to meet
16 with Ms. Cormier to speak about her summary. He
17 interacted with the parents on three occasions
18 between December of 2013 and September of 2014: a
19 meeting on December 19th, 2013, a meeting on
20 Mackenzie Road with T.R. on February 27th, 2014,
21 and an office visit on July 15th, 2014. In
22 January and February 2014, Mr. Chukwu made an
23 effort to contact the parents but was unable to
24 do so. This effort included calls to family
25 members and even announcements on CBC radio. Mr.
26 Chukwu was away from the office during March and
27 April of 2014.

1 Mr. Chukwu testified that the reason that
2 the decision was made to apply for a permanent
3 custody order was that based on his experience
4 with the parents coupled with the history he saw
5 in the Department records, there was absolutely
6 nothing that gave him any hope that the parents
7 would be able to provide care for H.B.. H.B.
8 could have good care elsewhere. The sooner the
9 decision is made for him, the better, because the
10 younger he is, the more opportunity exists for
11 him, according to Mr. Chukwu.

12 Mr. Chukwu testified that H.B.'s foster care
13 has been a resounding success. H.B. has grown
14 and is a very healthy child, he is jolly and
15 happy with everyone around him.

16 T.R.

17 T.R. is 39 years old. She is currently
18 living with M.R. and L.R. in Inuvik. M.R. and
19 L.R. have three children along with a roommate in
20 their house. T.R. and J.B. also live there; they
21 have lived there for two months. T.R. has her
22 Grade 12 education along with her certificate in
23 office administration. She went to a residential
24 school for five years. She started work recently
25 at the end of September 2014. She works three
26 shifts on the weekends from 6 p.m. to 2 a.m. at
27 the homeless shelter.

1 L.R. is married to M.R. who is a cousin of
2 T.R. L.R. has allowed T.R. and J.B. to live in
3 their house to help them find the courage to help
4 themselves, to become sober people and more
5 reliable people in society. T.R. has been sober
6 for two months and two weeks. She stopped
7 drinking at the end of July 2014. L.R. and M.R.
8 have been guiding, counselling, and maintaining a
9 healthy home for T.R. and J.B. There is no
10 alcohol allowed in the home. L.R. is willing to
11 custom adopt H.B.

12 My notes state that T.R. testified that she
13 and J.B. have been together since October 13,
14 2013. However, that probably should be an
15 earlier date. They split up in January 2014 for
16 a few months and have been back together since
17 April 28th, 2014. J.B. recently got a job as a
18 labourer with a local construction company. He
19 has been sober for a couple of weeks. He has
20 drank twice since moving in with M.R. and L.R.
21 but does not return home when he is drinking.

22 T.R. acknowledges that with respect to her
23 sobriety, it has had its ups and downs. She did
24 enrol in the Matrix program which is an alcohol
25 program but she stopped going to sessions because
26 one of the participants laughed at her. He was
27 someone she knew around town and she was afraid

1 that he would not respect the confidentiality of
2 what was said during the sessions. She has been
3 referred to counselling two and a half months ago
4 but is on a waiting list. T.R. acknowledges that
5 as a result of depression and other factors she
6 and J.B. kept drinking a lot. She had good
7 visits with H.B. at the foster parents' and at
8 the social services' office. T.R. felt that it
9 was comforting at the foster parents' home. The
10 foster parents welcomed T.R. and J.B. They would
11 allow unscheduled visits.

12 T.R. has five other children besides H.B.
13 They are all with other family members by her
14 choice. They were not apprehended. She gave up
15 the oldest at the age of 2, the second oldest at
16 the age of 13 and a half, the third oldest at the
17 age of 3, and the fourth and fifth at birth. She
18 would have had two children in her care at the
19 same time about seven years ago.

20 Since H.B. was apprehended, they have had
21 three child protection workers: Karen English,
22 Solange Cormier, and Lawrence Chukwu. T.R. felt
23 that Karen English ordered them around too much
24 and pressured them. She never helped them get
25 into counselling or into Alcoholics Anonymous
26 (A.A.). T.R. felt that they were being
27 threatened. If they did not do their

1 counselling, then H.B. would be kept away. The
2 second worker, according to T.R., was Solange
3 Cormier who she felt to be very good.
4 Ms. Cormier acknowledged the good things that
5 they were doing and helped them more than the
6 other two workers. T.R. has not had much contact
7 with the third worker, Lawrence Chukwu. T.R. and
8 J.B. cannot understand what he says from time to
9 time. She does not feel that the third social
10 worker has told them what to do in order to get
11 H.B. back.

12 T.R. and J.B. were evicted from housing in
13 June of 2013. They fought this and stayed until
14 December 2013. They have \$1,100 in arrears and
15 have entered into a payment plan of \$25 a month.
16 Although they can be put on a list for housing,
17 T.R. is afraid that they will be rejected because
18 of the money that they owe.

19 Since H.B. was apprehended, T.R. went to the
20 Matrix program but left because of another person
21 in the program. She felt that there was no way
22 that they could continue. They went to a
23 parenting program after the first apprehension.
24 T.R. wants H.B. back in their life. She
25 recognizes that being sober for two and a half
26 months is a short time. She realizes that she
27 has to become reliable and work on herself. She

1 recognizes that she just kept procrastinating
2 about counselling and A.A., she would like to go
3 to treatment outside of Inuvik. T.R. is
4 pregnant, the baby is due at the end of March.
5 J.B. is the father.

6 L.R.

7 L.R. has lived in Inuvik all of her life,
8 she is currently employed and has been employed
9 as a manager for two and a half years. Prior to
10 that, she had employment with Mackenzie Valley,
11 Aklak Air, and the Government of the Northwest
12 Territories. She has been married to M.R. for 13
13 years. They have three children aged 22, 12, and
14 10. M.R. works for a local company. They have a
15 stable home. It is clean and sober. There are
16 no alcohol and drugs allowed in this home. It
17 has been like that for years.

18 L.R. had drinking issues in the past and has
19 been clean and sober for quite sometime. She
20 occasionally goes out on a night out perhaps two
21 or three times a year. When she does go out, she
22 will stay away from her home until absolutely
23 sober. If she needs someone to look after her
24 children, she will have her eldest son or one of
25 her nieces come in and look after them.

26 She met J.B. and T.R. when they were staying
27 at the shelter. It was not working out for them

1 because the shelter was closed from 10 a.m. until
2 6 in the evening and there was no safe place for
3 them to stay during the day. L.R. brought J.B.
4 and T.R. into her house. This was two months
5 ago. T.R. has been sober for two and a half
6 months; J.B. has slipped twice with respect to
7 alcohol in the past two months.

8 L.R. says that T.R. and J.B. are absolutely
9 not involved in drugs. T.R. has been working in
10 the homeless shelter on the weekends; J.B. has
11 been working for a local contracting company the
12 past three weeks. They are both on a waiting
13 list for counselling.

14 L.R. is aware that there is a long waiting
15 list for counselling. She does a lot of
16 counselling herself with T.R. and J.B., although
17 she acknowledges that she is not a counsellor.
18 She testified that counselling can take different
19 forms, including trained counsellors, elders, and
20 relatives. T.R. and J.B. are welcome to stay in
21 her house as long as they want to. T.R. and J.B.
22 have a room with a phone, cable TV, everything
23 that they would want in their own house. L.R.
24 would like to see them turn their lives around.

25 In the three-bedroom house currently are
26 L.R. and M.R. and two boys aged 10 and 12.
27 Occasionally someone will bed surf at their place

1 if in need of a safe haven.

2 On Tuesday of this week, L.R. and M.R., T.R.
3 and J.B. discussed H.B.'s wellbeing and various
4 options. L.R. and M.R. are willing to take H.B.
5 in and raise him as their own. T.R. and J.B.
6 would be involved and would assist with him
7 growing up. They would stay in the house but
8 would not have full control over him.

9 Essentially H.B. would have four parents. In
10 this way, according to L.R., H.B. would maintain
11 his cultural identity because L.R. and M.R. go
12 out on the land all year round and would raise
13 him in this environment. L.R. admits that she
14 has never met H.B., but because T.R. is family.
15 She is willing to take him as her own.

16 If J.B. or T.R. slipped or had a major
17 relapse with respect to alcohol, L.R. would first
18 worry about H.B. L.R. feels that at this point
19 J.B. and T.R. are not ready to take their son.
20 They need to spend more time on themselves.
21 Counselling will be lengthy given that T.R. was
22 in residential schools. She has a lot of issues
23 which she deals with on a daily basis. J.B.
24 needs to work on himself also. The fact that
25 T.R. has been sober for two and a half months is
26 almost a good first step. The first complete
27 step is three to four months of sobriety. Both

1 J.B. and T.R. need to get back to feeling whole
2 again. This can only be done with lots of
3 counselling which can take many forms. L.R.
4 would like the Court to know that J.B. and T.R.
5 are good people.

6 D.R. (note that the following summary of the
7 evidence of D.R. was not given orally).

8 D.R. is the 73-year-old foster mother of
9 H.B. She has resided in Inuvik for 16 years. She
10 has been a foster parent for over 40 years. She
11 has fostered over 60 children in total and
12 between 25 and 35 children in her 16 years in
13 Inuvik. She has a 43-year-old son who lives with
14 her and her husband in their home in Inuvik.

15 H.B. has been in D.R.'s care since he was 6
16 months old in May of 2013. She also cared for
17 him for four or five days when he was two weeks
18 old and then again when he was one month old.

19 Since May 2013, H.B. has been in her care
20 continually, except for a period of three weeks
21 when D.R. and her husband went on a trip to
22 Edmonton and other short periods of respite.
23 D.R. also fosters an 18-year-old foster daughter,
24 who has been in their home since she was 10 years
25 old.

26 D.R. describes H.B. as a sweetheart: A
27 happy, contented and lovely little boy who is

1 always smiling. T.R. and J.B. arrange visits
2 with H.R. in advance. Once or twice, they have
3 dropped in. D.R. and H.B. have also come across
4 them while playing in the park. T.R. and J.B.
5 were going to visit H.B. at Christmas 2013 but
6 got stuck in Aklavik apparently. They did visit
7 on three days on January 17, 18, and 20, 2014.
8 There were no visits in February, March, and
9 April 2014. Both D.R. and J.B. visited on May 6,
10 7, and 8, 2014. D.R. went on holidays in June
11 2014 with H.B. H.B.'s parents visited on June 11
12 just before they left. D.R. returned to Inuvik
13 with H.B. on July 11. His parents visited on
14 July 16 and 22 but not in August. They visited
15 on September 10, 11, 12, and 16. There were no
16 visits in October 2014.

17 H.B. calls D.R. "momma." She tells him not
18 to call her that as she is not his momma. D.R.
19 is H.B.'s caregiver. If he gets a bump or gets
20 hurt, he comes to her to cuddle.

21 D.R. recalls one incident when J.B. attended
22 her residence for a visit when he had been
23 drinking. She asked him to leave and he did.
24 This happened once in the park also.

25 When H.B. is visited by his parents, he
26 first looks at them wondering who they are, but
27 warms up to them and enjoys them. Both T.R. and

1 J.B. interact fine with H.B. They treat him very
2 good. D.R. would like H.B. to remain with her.
3 Her son, who is 43, would like to adopt H.B.
4 D.R. makes an effort to have H.B. attend
5 community events to see others of his culture.
6 D.R. is not aboriginal.

7 D.R. feels that T.R. and J.B. respect her
8 and her husband and respect their house.

9 Analysis.

10 Is the Child in Need of Protection?

11 The child was apprehended on May 25, 2013;
12 the six-month temporary custody order was granted
13 on September 9, 2013. At the time of this
14 hearing, the parents had just obtained
15 employment. They are living as guests of L.R.
16 and M.R. T.R. has been sober for two and a half
17 months; J.B. for two weeks. Their last visit
18 with H.B. was on September 16th, 2014. In 2014,
19 there have been approximately 17 visits with H.B.
20 The Director is relying on section 7(3)(r) of the
21 Act as the basis for seeking a declaration that
22 the child is in need of protection, i.e., that
23 the child's parents are unavailable or unwilling
24 or unable to properly care for the child and the
25 child's extended family have not made adequate
26 provisions for the child's care or custody.

27 At this point in time, it is conceded by

1 counsel for the parents, and it is the finding of
2 the Court, that H.B. is in need of protection. I
3 need not discuss section 7(3)(i) of the Act.

4 Permanent custody order versus temporary
5 custody order.

6 Given the declaration that the child is in
7 need of protection and the plan of care report
8 which was filed in Court during the hearing, it
9 is necessary to make one of the child protection
10 orders allowed in subsection 28(1) of the Act.
11 The options are to have the children returned, a
12 supervision order, a temporary custody order or a
13 permanent custody order. Given what I have
14 stated in the preceding section, I do not find
15 that returning the child to the parents, either
16 unsupervised or supervised, to be an acceptable
17 option. Neither parent is in a position to care
18 for H.B. In my view, I must decide whether the
19 child should be placed in the temporary custody
20 or the permanent custody of the Director. These
21 two child protection orders are the only
22 realistic options.

23 The Act instructs me, as one would expect it
24 to, to make the child protection order that is in
25 the best interests of H.B. The Act provides some
26 guidance when considering what is in the "best
27 interests" of the child. Section 3 states:

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Where there is a reference to this Act to the best interests of a child, all relevant factors must be taken into consideration in determining the best interests of a child, including the following factors, with a recognition that differing cultural values and practices must be respected in making that determination:

- (a) the child's safety;
- (b) the child's physical, mental, and emotional level of development and needs and the appropriate care or treatment to meet those needs;
- (c) the child's cultural, linguistic, and spiritual or religious upbringing and ties;
- (d) the importance for the child's development of a positive relationship with his or her parent, a secure place as a wanted and needed member

1 of the family and a stable
2 environment;

3 (e) the importance of
4 continuity in the child's care
5 and the possible effect on the
6 child of disruption of that
7 continuity;

8 (f) the risk that the child
9 may suffer harm through being
10 removed from, kept away from,
11 returned to, or allowed to
12 remain in the care of a
13 parent;

14 (g) the merits of any
15 proposed plan of care for the
16 child;

17 (h) the child's relationship
18 by blood or through adoption;

19 (i) the child's view and
20 preference if they can be
21 reasonably ascertained;

22 (j) the effects on the child
23 of a delay in making a
24 decision.

25
26 I agree that the test that I should apply in
27 deciding between a temporary versus a permanent

1 custody order is as follows: Is there a
2 substantial likelihood that within a reasonable
3 time period from the date of the making of the
4 child protection order, either or both the
5 parents will be in a position to provide
6 sustained adequate care for the child?

7 I must look at the impediments of each
8 parent that prevent him or her from providing
9 adequate care to H.B. and determine if these
10 impediments can be remedied in a reasonable
11 period of time. If these impediments cannot be
12 remedied in a reasonable period of time or if
13 they will be remedied on a temporary basis so
14 that the child will be in need of protection
15 again shortly after he is returned to a parent,
16 it is not in the best interests of the child to
17 be subject to a temporary custody order. It is
18 in the best interests of a child to have
19 decisions effecting him made and implemented
20 without delay. Further, continuity and stable
21 environment are important factors that need to be
22 considered.

23 As I stated in Re: S.S. and H.S., supra at
24 paragraph 47:

25
26 The possibility of placement
27 of the children to a member of

1 their extended family is not
2 relevant to this type of
3 decision except that in
4 exceptional cases it might
5 lengthen the "reasonable
6 period of time" that the
7 parent is given to deal with
8 his or her impediments to
9 parenting.

10

11 Impediments.

12

13 According to the Director, the impediments
14 to the parents in providing adequate care to H.B.
15 are as follows: (a) alcohol abuse; (b)
16 homelessness; (c) lack of income; (d) parenting
17 skills. Let me deal with each of these in turn.
18 There is no doubt that alcohol abuse is the
19 primary impediment for these parents. In each of
20 the three apprehensions in the past, the parents
21 were intoxicated and unable to care for H.B. The
22 first child protection worker tried to get the
23 parents to take the Matrix program. J.B.
24 attended as a guest of T.R.; how many times is
25 not known. T.R. ended up quitting the program
26 because she felt that what she said would not be
27 held confidential by one of the individuals
 taking the program. T.R. admits that she and

1 J.B. were drinking until two and a half months
2 ago. This drinking was as a result of depression
3 initially but also issues that she had with
4 respect to her residential school experience.

5 The Court never heard from J.B.. This could
6 be for various reasons. He did not sit at
7 counsel table. It could be that he was
8 intimidated by the process. I note that he
9 attended court regularly and was sober. I take
10 this as a sign of interest in his son. Counsel
11 for the Director invites me to make an adverse
12 inference because of his failure to testify. I
13 decline to do so, however I am left with no
14 explanation as to why J.B. did not take the
15 Matrix program or what efforts he has made to
16 deal with his alcohol addiction.

17 I do not brush aside T.R.'s explanation as
18 to why she felt it was difficult to go to the
19 Matrix program or to A.A. Her concerns about
20 confidentiality in the context of her lack of
21 self-esteem are real. But, there are
22 alternatives, and the fact remains that she did
23 not enrol in counselling until recently and that
24 she has not sought help with respect to
25 residential school issues aside from the
26 counselling that she has received from L.R.

27 The Court has evidence that T.R. has been

1 sober for two and a half months. J.B. has been
2 sober for the same length except for two slipups.
3 As L.R. said, two and a half months is not even
4 yet a first step but it is a start. Alcohol
5 abuse is still an impediment which, given the
6 past history of abuse and the short time it has
7 been under control, will not be remedied in a
8 reasonable time.

9 The parents owe arrears to the housing
10 association of \$1,100. They have a payment plan
11 which will pay \$25 a month. They have not made
12 application under the homelessness program for a
13 grant to pay off the arrears. I find the excuse
14 for the failure to complete and submit the
15 application to be unconvincing. The parents were
16 evicted in December of 2013, they knew the
17 arrears amount, they could have submitted the
18 application in the past ten months. Given,
19 however, the acceptance of the parents into the
20 home of L.R. and M.R. and the assistance being
21 provided to them, it appears that housing is an
22 impediment that could be remedied in a reasonable
23 period of time. T.R. and J.B. are now working.
24 The period of employment has been a short time
25 for both of them. T.R. says it makes her feel
26 good and useful. T.R. has a good education; she
27 appears to be an intelligent woman. I am

1 satisfied that they can earn an adequate income
2 if they remain sober.

3 The Director claims a lack of parenting
4 skills on the part of the parents. T.R. raised
5 two of her boys to a certain age. She and J.B.
6 took the parenting course offered by the
7 Inuvialuit Regional Corporation. Their visits
8 with H.B. have been good, according to the foster
9 mother. I realize that the environment in a
10 supervised visit is artificial to a large degree
11 and not indicative of parenting skills. However,
12 the only evidence I have of lack of parenting
13 skills is the behavior of the parents when they
14 are intoxicated. This is more related to their
15 intoxication. I do not feel that lack of
16 parenting skills is an issue.

17 Let me deal with one other point. T.R.
18 stated that she felt that it was difficult to
19 communicate with her current social worker. I
20 heard Mr. Chukwu testify and had no difficulty in
21 understanding him, nor did he appear
22 intimidating. To the contrary, he appeared as
23 knowledgeable and having a genuine concern for
24 the safety of his clients. Having said that, I
25 realize that T.R. has a certain background and is
26 a residential school survivor. Subjectively, she
27 may have difficulties; I do not dismiss that.

1 However, the fact remains that she and J.B. were
2 off the radar from at least December 2013 to July
3 2014 with minimal contact with Mr. Chukwu.
4 Further, during that time, they had at most 17
5 visits with H.B., and H.B. was staying in an
6 environment that T.R. described as welcoming and
7 comfortable. The lack of visitation cannot be
8 attributed to an uneasiness with the Department.

9 In summary, I am not satisfied that the
10 parents have established that they have resolved
11 their addiction to and abuse of alcohol nor that
12 it can be resolved in a reasonable time. There
13 has been a start but a late start. Were I am to
14 decide the temporary versus permanent custody
15 issues on the analysis of the impediments of
16 providing adequate care to H.B., I would make a
17 permanent custody order.

18 Extended family.

19 The evidence of Zoila Castillo and Lawrence
20 Chukwu is that the Director made inquiries about
21 extended family but none were available to care
22 for H.B. Their testimony was that neither T.R.
23 nor J.B. provided the names or contacts of any
24 extended family members. The fact remains,
25 however, that M.R. is a cousin of T.R., and
26 therefore L.R. and M.R. appear to be extended
27 family of H.B. L.R. and M.R. have offered to

1 custom adopt H.B. and to allow T.R. and J.B. to
2 participate in his upbringing. The Child and
3 Family Services Act recognizes the importance of
4 extended family in a number of places. For
5 example, the preamble states "and where a child's
6 extended family can often provide important
7 support in meeting the best interests of the
8 child." And it is a principle of that Act in
9 section 2:

10
11 (i) children, where
12 appropriate, parents, and
13 adult members of the extended
14 family should be given the
15 opportunity to be heard and
16 their opinion should be
17 considered when decisions
18 affecting their own interests
19 are being made.

20 (1) children should be
21 supported within the context
22 of their family and extended
23 family to the greatest extent
24 possible by the Director
25 providing services or
26 assisting others in providing
27 services on a voluntary basis

1 to support and assist the
2 family.

3

4 Further, the grounds for finding a child in
5 need of protection include the possibility of the
6 extended family caring for the child. For
7 example, section 7(3)(r) finds:

8

9 A child in need of
10 protection where the child's
11 parent is unavailable or
12 unable or unwilling to
13 properly care for the child
14 and the child's extended
15 family has not made adequate
16 provision for the child's care
17 and custody.

18

19 Notwithstanding that I found that alcohol
20 abuse is an impediment that is not yet under
21 control and I would award permanent custody to
22 the Director, I feel that such an order should
23 not be made where there is a realistic
24 possibility that an extended family member could
25 care for H.B. I recognize that the ultimate test
26 is what is in the best interests for H.B. The
27 argument that H.B.'s chances of adoption will be

1 stronger if he is available for adoption at an
2 earlier age is a persuasive argument. If there
3 is no realistic prospect of the parents being
4 able to care for him in the reasonable future,
5 then the ties should be cut to give him a chance
6 at a quick adoption. On the other hand, there is
7 no guarantee that he will be adopted into an
8 aboriginal family or that his aboriginal culture
9 will be respected. Maintenance of his aboriginal
10 heritage is a persuasive factor also. The
11 possibility of a placement with an extended
12 family must be explored before a permanent
13 custody order can be made. I do not fault the
14 Director for not having done this, the parents
15 were out of contact with the Director for seven
16 months. The possibility of an extended family
17 placement only came to the Director's attention
18 at the beginning of the trial.

19 For this reason, I have decided on a
20 temporary custody order. My expectation is that
21 in the next six months, the Department will
22 explore the possibility of a custom adoption or
23 some other involvement of L.R. and M.R. During
24 that time period also, T.R. and J.B. will have
25 the opportunity to work on their impediments to
26 parenting H.B. - their alcohol abuse,
27 homelessness, and financial instability. Perhaps

1 after six months those impediments will have been
2 dealt with such that they are capable of assuming
3 a parenting role in H.B.'s life.

4 Before I summarize my findings, there is,
5 however, one additional point that I wish to
6 make. The importance of these proceedings cannot
7 be overstated. A child's future is at stake.
8 The evidence that is brought to the Court is
9 relied upon to make decisions that affect that
10 future. It is rare that the parents swear an
11 affidavit in child protection proceedings. The
12 Court, therefore, finds itself relying upon the
13 affidavits of the Director to make decisions.
14 The Court assumes that the statements in the
15 affidavit have been checked and rechecked and are
16 true. As I said, the parents rarely respond to
17 these affidavits.

18 The Court was provided with an affidavit
19 sworn on February 25, 2014, and filed on February
20 25, 2014. It supported the application for
21 permanent custody. Paragraph 23 of the affidavit
22 stated:

23
24 That H.B.'s parents have not
25 contacted me since December
26 20, 2013. I have no idea of
27 their whereabouts. My last

1 contact with them was on
2 December 19, 2013. The
3 parents last access visit with
4 H.B. was in the last week of
5 December 2013. To my
6 knowledge, T.R. and J.B.
7 continue to struggle with
8 issues of homelessness, lack
9 of income, lack of parenting
10 skills as well as issues of
11 alcohol and drug usage. To my
12 knowledge, they have not done
13 anything to address their
14 alcohol usage and lack of
15 parenting skills, or any of
16 the issues that infringe on
17 the safety of their son.

18
19 During the hearing, the Court heard that
20 T.R. had enrolled in the Matrix program in
21 September 2013 and had completed ten of the
22 sessions. Both parents had done five sessions of
23 the parenting course in February and March 2013.
24 The foster mother D.R. testified that the parents
25 visited H.B. on January 17, 18, and 20, 2014.
26 Zoila Castillo testified that drug usage was not
27 a problem with these parents in respect of their

1 care for H.B.

2 I accept that Mr. Chukwu testified that his
3 intention in this paragraph of his affidavit was
4 to refer only to things that the parents had done
5 since he took over the file. This meaning is not
6 apparent from the obvious reading of the
7 paragraph and does not explain the other
8 contradictions I have stated. To put the kindest
9 interpretation on it, the paragraph is
10 misleading.

11 As I said earlier, this information is
12 relied upon by the Court. The child protection
13 workers have a duty to be honest, unambiguous and
14 straightforward in their affidavits. Otherwise,
15 they will lose the confidence of the Court.

16 Conclusion.

17 For the reasons I have stated, the
18 application by the Director for the declaration
19 that the child H.B. is in need of protection and
20 that he be placed in the permanent custody of the
21 Director of Child and Family Services is
22 dismissed.

23 H.B. is declared to be in need of protection
24 and shall be placed in the temporary custody of
25 the Director of Child and Family Services for a
26 period of six months. The parents of the child
27 should have reasonable and generous access to the

1 child at the discretion of the Director of Child
2 and Family Services as is in the best interests
3 of the child pursuant to section 28(1)(c) of the
4 Child and Family Services Act.

5 The Director shall determine whether there
6 are members of the extended family of the
7 parents, including L.R. and M.R., who can make
8 adequate provision for the child's care or
9 custody. The parties shall be before the
10 Territorial Court sitting in Inuvik, Northwest
11 Territories, on January 26, 2015, at 3 p.m. for a
12 review and status update by the parties. The
13 Director will modify the plan of care that was
14 submitted to the Court on October 9th, 2014, as
15 part of the hearing to reflect this order and
16 submit it to the Court.

17 Finally, I'd like to thank counsel for their
18 conduct during this case. The filed materials
19 were helpful but, more importantly, both counsel
20 conducted a difficult case in a way that gives
21 credit to their profession.

22 -----
23 PROCEEDINGS ADJOURNED UNTIL JANUARY 26, 2015
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CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 10th day of December, 2014.

Celine Hook, CSR(A)
Court Reporter

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