

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

J.E.M

Born: March 26, 2010

F.F.M.

Born: November 17, 2012

Apprehended: February 18, 2018

REASONS FOR DECISION OF THE

HONOURABLE CHIEF JUDGE CHRISTINE GAGNON

There is a ban on the publication, broadcast or transmission of any information that has the effect of identifying (a) a child who is (i) the subject of the proceedings of a hearing under this Act, 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.

s.87 CHILD AND FAMILY SERVICES ACT

DATE OF HEARING: December 12, 13, 14, 2018; January 24, 2019

DATE OF DECISION: February 4, 2019

APPEARANCES:

BettyLou McIlmoyle for the Director of Child and Family Services

Keelen Simpson for the Mother, B. M. (permission granted to withdraw as counsel)

J.M. the Father is self-represented

Michael Hansen Counsel for the children

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[1] This is a hearing on the Director's application for a permanent custody order regarding J. and F. M.. The Director bases its application on section 7 (b) and (k) of the *Child and Family Services Act*.

[2] The issues are:

1. Are the children in need of protection from their mother?
2. Are the children in need of protection from their father?
3. What appropriate order may I make?

The apprehension

[3] J. is now 8 years old, F. is 6. At the time of apprehension, the children were subject to a six month Supervision Order granted on December 15, 2017. The salient points of this Order are:

- The children shall reside with the mother, at the Women's shelter in Fort Smith, until they go to Ranch Ehrlo for treatment;
- The parents shall be free of alcohol or illegal drugs while she cares for the children;
- If the mother leaves the women's shelter, she is to notify the Child Protection Worker and a case conference will be arranged.

[4] The children were apprehended on February 18, 2018, as a result of a constellation of events that began on February 17.

- The mother left the women's shelter with her children, early in the morning after having been awake most of the night, saying that she was going to the health center.
- A verification at the health center by a Child Protection Worker confirmed that she had not attended that day.
- The mother phoned the women's shelter around 9:30 am, saying that she had returned from the health center, and that her children were sleeping at a babysitter's house. She said that she would bring them back when they woke up.
- Around 6:12 pm, a Child Protection Worker screened a report that the mother was smoking crack at a house while her children were present.
- A Child Protection Worker, accompanied by the police, went to a house located at 67 St-Ann Street and found J. and B. M. with their children. Residue believed to be drug residue was found. The mother appeared agitated. She was spoken to by the Child Protection Worker, and insisted that she had gone to the health center, while the worker had proof that she had not. It is not clear whose home it was. The Worker apprehended the children.
- Following the apprehension, the parents were reported to have been seen by various sources, in an intoxicated state.

[5] The Director applied for a permanent custody order. A hearing was scheduled to proceed in August 2018. An adjournment was sought due to new counsel entering the proceedings. The hearing was rescheduled to December 12, 2018.

[6] The mother left Fort Smith in August 2018 and has not returned. She has not kept contact with her counsel, although she was spoken to by the Child Protection Worker on several occasions. She repeated that she intended to be present on December 12.

[7] On December 12, at 9:30 am, the matter was called. The father was present, the mother wasn't. The hearing proceeded in the mother's absence, on the basis of documentary evidence that had been filed on her behalf.

The legal framework:

[8] Parents have rights and obligations toward their children. These include:
The parents' rights toward their child include:

- To decide where and with whom he or she will live (custody)
- To have access to him or her (visit)

[9] The parents' obligations include:

- To care and provide for their child
- To supervise and protect him or her
- To ensure that the child receives medical attention
- To ensure that the child's physical, mental and emotional needs are met
- To ensure that the child has access to education

[10] The objectives of the *Child and Family Services Act* are to promote the best interests, protection and well-being of children, while recognizing that children are entitled to protection from abuse and harm and from the threat of abuse and harm. The *Act* also specifies that there should be no unreasonable delay in making or carrying out a decision affecting a child.

The Best Interest of the Children

[11] The best interests of the children are listed at section 3 of the *Child and Family Services Act*. At the top of that nomenclature, figures the safety of the child, followed by the child's physical, mental and emotional level of development and needs, and the appropriate care or treatment to meet those needs.

[12] In making a decision, a court shall take into consideration the child's cultural, linguistic and spiritual or religious upbringing and ties; 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 of the family, and a stable environment; and also the importance of continuity in the child's care, and the possible effect on the child of any disruption in that continuity. Finally, the court shall consider the effects on the child of a delay in making a decision.

[13] The court is also directed to consider the child's views and preferences. These views and preferences have been expressed through counsel from the Office of the Children's Lawyer, from whom I learned that:

- J. and F. currently live with their father's second cousin, G.C., and his wife T., in Fort Smith. J., an 8-year old boy, would like to live with his father. If this is not possible, then he would go with his mother. F., a 6-year old girl, would like to live with both her parents.
- They say that they would like to be able to go to G. and T.'s when their parents are drinking.
- They have clearly expressed the importance for them to live together, and that they want to have access to their parents.

[14] From the evidence adduced during the hearing, I learned that when the children were staying with their mother, she had a tendency to isolate herself with them. They stayed on-and-off with G. and T. C. every time they were apprehended, or when their parents were drinking.

[15] They have lived continuously with the C. family, from October 2017 to January 2018. They were returned to their parents under a supervision order on February 14, 2018, and they were apprehended again on February 18, 2018. They have been with G., T. and their three children since then. The C. couple have children close in age to J. and F. They have developed bonds with them. J. is said to be less

of a parent for his sister, of whom he continues to be protective. J. does well in school. He received an award last year for being the most improved student.

[16] F. has received a needs assessment¹. A number of concerns have been identified, and further assessments will be conducted, with a view of a referral to a pediatrician. She may have been impacted by her mother's pre-natal consumption of alcohol. Behavioral issues have been noted since she began school, involving anxiety, hyperactivity and aggression.

[17] G.C. is of Chipewayan ancestry, and T. C. is of Ojibway ancestry. He ensures that the children eat country food, that they participate in activities such as hunting, fishing and camping. He agrees that J. and F. need to continue to see their father. Although he recognizes that they miss their mother, he is reluctant to offer the same access with her as with their father J. They intend to adopt the children. J. and F. appear to be happy and stable with them, having lived with them continuously for almost 12 months.

[18] When they were with their parents, particularly in 2015-2016, when there was much drinking and violence between them, the children reported being scared of them. The mother often displayed erratic behavior, which was enhanced when she was intoxicated by drugs, alcohol or both, while not being compliant with her medication. The children are particularly sensitive to adults consuming alcohol and raising their voices. F. seems to be triggered whenever she hears a telephone ringing, associating this with her mother. They were particularly disappointed recently when a telephone visit had been arranged, and their mother failed to call.

[19] The children need a stable home, continuity in care, and a place that is safe. They need to feel loved, while remaining connected to their culture. They also need certainty. Not knowing if they will stay with the C. family, or if they will go live with their parents is very difficult. They have grown attached to their cousins. Not knowing what will happen to them if they go back to live with their parents creates uncertainty and it is not desirable. Prolonging a period of uncertainty until the limitation period is reached, even if it is possible according to the legislation, is not in the interest of these children.

¹ Exhibit 2 p.249 to 259

Are the Children in need of protection from their Mother?

[20] The on-going issues are B. M.'s addictions, her homelessness and her mental health issues. Mrs. M. was intoxicated by alcohol and possibly drugs in the presence of her children at the time of apprehension. She had left the women's shelter with them, pretending to go to the health center. Mrs. M. had also complained that day suffering from insomnia due to her schizophrenia. At the time of intervention, B. M. had dragged her children out of bed to follow her down a path that eventually led to Mr. M., drugs and alcohol. They were unable to care for their children. This incident was the last straw after almost 8 years of trying to support and assist this family.

[21] B. M. is 39 years old. She grew up as a foster child since the age of 2. At age 12, she joined a street gang in Edmonton². Reports from Alberta Social Services indicate that she had three teen pregnancies. She relinquished these children to the Director of Child & Family Services in Alberta.

[22] She met J. M. in Edmonton. They got married at a detention center when she was serving a sentence for manslaughter. They had a child, who also became a ward of the province. She and J. M. moved to Fort Smith to try to get a fresh start. Upon arriving in town, she soon got in touch with Johanne Gauthier to seek help with a number of matters. While in Fort Smith, she became pregnant. She has a history of mental health issues: Obsessive Compulsive Disorder, Post-Traumatic Stress Disorder, Paranoid Schizophrenia, Bi-Polar Disorder, compounded by Multiple Substance Abuse Disorder.

[23] When Child Protection Worker Johanne Gauthier first met her, B. M. was aware of her diagnoses, and she was taking medication for her conditions. However, when she became pregnant with J., she decided to interrupt the taking of medication, in order not to harm her baby. Ms. Gauthier noted increased anxiety and obsessive behavior with the mother.

[24] J. was born in March 2010. Mrs. M. received help with the baby through a voluntary service agreement. In November of that year, Mr. M. signed a document stating that he and Mrs. M. were not in a common law relationship.

[25] Ms. Gauthier reported that B. M. complained often of Mr. M.'s drinking, and not helping her with the children. There were reports of intoxication and lack

² Exhibit 2 – p. 205

of sober caregivers, as well as mutual spousal violence, with Mrs. M. being more often the aggressor.

[26] Drinking and substance abuse continued and when Mrs. M. became pregnant again, she was convicted of drinking and driving. She received a sentence of imprisonment, which appeared to have been served intermittently on weekends. One witness commented that F. was born while Mrs. M. was serving her sentence.

[27] B. M. has been to residential treatment in 2017. She is diabetic and has hepatitis C. The M.s have lost their housing in Fort Smith, they owe \$5000 in arrears to the housing authority. She and Mr. M. were living separately as a result, she at the women's shelter with the children, he with friends or relatives. She left Fort Smith, with a man she identified as her boyfriend, and returned to Edmonton.

[28] Since B.M. has been in Edmonton, the Child Protection Workers have received reports that there may be renewed affiliation with street gangs. While in Alberta, Mrs. M.'s place of residence has varied, from a hospital, to a hotel, to having no address.

[29] From 2010 to 2018, J. and B. have been separated many times, either by decision, or because of being incarcerated, either pre-trial or post sentence. They have lived in affordable housing, in a cabin, in a home offered by J.'s band, and they have been transient, especially when the children were in care.

[30] She has had recent contacts with Mr. M., asking for financial assistance. She has been out of touch with her case manager from August 2018 to about mid-October 2018. She has phoned the on-call worker after hours about once per week, demanding to speak to her children. On her last contact with one of them before December 12, 2018, she sounded paranoid, and unwell. She was reminded of the date of the hearing, she was told who her lawyer was, and to get in touch with her. She confirmed that she would come to Fort Smith for the hearing. According to G. C., she even posted on Facebook that she was coming to Fort Smith December 9, 2018.

[31] She claimed to the on-call worker that she had a plan, and letters of support, but she did not come to Fort Smith on December 12 for the hearing. The hearing was adjourned to January 24, 2019 for submissions. Mrs. M. was notified of the date, she indicated that she wished to participate by telephone and provided two telephone numbers at which to reach her.

[32] In her exchange with the Child Protection Worker, she said that she had a two-bedroom home for her children, that she was working, that Income Support was helping her. She became upset when the worker said that she could not just speak with her children that day without notice. A call was arranged the next day. The children came to the office with their father, they phoned the mother but there was no answer.

[33] On January 24, 2019 the clerk of the court called both numbers provided by Mrs. M., but she heard a recording stating that the numbers were not in service.

Analysis and conclusion:

[34] Mrs. M. has been considered and treated as the primary care giver for the children, and indeed she has always been the one challenging the Director's applications for temporary custody of her children. Yet beyond her belligerent stance, she has offered no concrete evidence of having addressed her addiction issues or her homelessness, nor is there evidence that she has her multiple mental illnesses are under control. There is no evidence that Mrs. M. has sought treatment for her trauma, and recent evidence shows that she remains volatile, and prone to aggression and intimidation in her dealings with others.

[35] I find that the children have been exposed to domestic violence by or towards a parent, that there is a substantial risk that the exposure will result in physical or emotional harm to the children and the child's parent fails or refuses to obtain services, treatment or healing processes to prevent the harm, and that the children are in need of protection pursuant to s. 7(3)(k) of the *Child and Family Services Act*.

[36] I also find that although Mrs. M. has consistently said that she was willing to care for her children, she demonstrated that she is unable to properly care for them, and the children's extended family have not made adequate provision for the children's care or custody, and that her children are in need of protection pursuant to section 7(3)(r) of the *Child and Family Services Act*.

Are the children in need of protection from their Father?

[37] The Director's concerns with respect to J. M. are that he continues to consume alcohol and that he has not taken steps to be more active and involved when it comes to supervising and protecting his children. The Director is also concerned that Mr. M. is not able to keep his children safe from B. M., and that if

the children were to be returned to him, B. M. would come back to Fort Smith and try to re-enter their lives; as evidence of this, during the hearing Mr. G.C. stated that he saw a Facebook post in which B. M. claimed her intention to make Mr. M. and his new partner separate.

[38] The Director is concerned that the last time the children were returned to B.M., they were apprehended again only four days later.

[39] J. M. is 50 years old, of Chipewayan ancestry. Although he does not speak his language, he participates in traditional activities such as hunting, fishing and camping. He has been a permanent ward of the Director of Child and Family Services at a young age.

[40] J. M. seemed initially to support his wife's attempts to recover her children. Now he realizes that the children need to be protected from their mother, due to her volatility and instability.

[41] He is maintaining contact with his children, but he does not appear to be involved in their lives. He has not yet taken steps to become responsible for them. When asked about this, he said that he did not think that by law, his children could be returned to him.

[42] He says that his relationship with Mrs. M. is over, and that they have lived apart for about 2 years. He is however still legally married with her. He said that he told her that he no longer wants to be with her, but he realizes that she does not acknowledge this. He has come to recognize that he should seek to formalize their separation and that he might seek a divorce. He has not yet taken steps towards this.

[43] He's been to residential treatment in 2017 for alcohol addiction, but he continued to consume alcohol upon his return to Fort Smith. Until recently, he had not acknowledged that his consumption of alcohol, or that associating with people who consumed alcohol, put his children at risk of harm, if not physically, at least emotionally. He said that he is prepared to take more counselling, but that he is not prepared to return to a residential treatment program.

[44] He recently met a woman (T. L.) in Fort Smith, and he now lives with her and her children in a three-bedroom home. He says that since B.M. left Fort Smith, he's been less stressed. He says that he has cut down on his drinking. He overall feels better.

[45] He has been consistent in visiting his children, he appeared to be sober. When he is with the children, he either takes them to the library, to the recreation center, and also he visits his mother. He shares meals with them. He's been to see J. jig at his school before Christmas.

[46] He has not been invited to meet with teachers or health practitioners, nor has he requested to participate. When asked if there would be room for his children in his current home, he recognized that there wasn't, and that they would have to adapt and make do. He knows that he and his partner would need to move to a larger home. Although he has a place where to live, it is incumbent on him maintaining his relationship with Ms. L. Because of the arrears owed to the Housing Authority, he is not in a position to secure a place of his own where he could live with his children.

[47] He has been employed steadily for the Town of Fort Smith, as a heavy equipment operator. He noted that since he drinks less, he is also more consistent at work.

[48] In his relationship with B. M., he was the passive one. He has been assaulted by her many times, and his reaction to this was to try to avoid conflict, either by leaving her, or by drinking alcohol.

[49] J. M. has not demonstrated that he was able to care for the children, in the sense of assuming his parental obligations. The children have been in his care on a few occasions in the past, when Mrs. M. was incarcerated. He either did not actively supervise them, or he had them in places where they were at risk due to other people's actions. He now realizes the need to be present in his children's lives and he wants it.

[50] He has reduced his consumption of alcohol, he seems stable and he seems to be happy in his relationship. Although he has no desire to be with B.M., he is still fragile and vulnerable to her intimidations and manipulations.

[51] A supplementary affidavit covering the period of December 14, 2018 to January 18, 2019 discloses that Mr. M. has continued to seek access with his children, and that there were some overnight stays at his home, which he shares with Ms. L. The children, although happy to be with their father, reported that they did not feel safe due to people drinking in the home, which included their father.

Analysis and conclusion:

[52] It is more difficult to determine if the children are in need of protection from their father. In the case of Mr. M., it is not so much what he does, as what he has not done since the children were apprehended.

[53] He clearly is in a better place now, both physically and mentally. However, he has not yet reached the point where he is able to care for someone else who would depend on him for their livelihood, namely his children.

[54] He is exercising his rights as a parent, but he is not fulfilling his parental obligations.

[55] As good as it is for him to have secured a place to live, this place does not include a space for his children. Furthermore, as long as he depends on someone else for his housing, his children are not safe.

[56] Mr. M. needs to learn how to parent his children. He needs to get to know his children and to understand their needs. He is disconnected from their school needs, as well as of their medical needs. Furthermore, as long as B. M. has equal access rights to their children, his children are unsafe.

[57] At this time, although he is willing to care for his children, he is unable to properly care for them, and the children's extended family have not made adequate provision for the children's care or custody. As a result, I find that the children are in need of protection with respect to their father, pursuant to s. 7(3)(r) of the *Act*.

The appropriate order

[58] Upon declaring that the children are in need of protection, I may decide to issue a further temporary custody order, a permanent custody order, or I may return the children subject to a supervision order.

[59] I have come to the conclusion that only a permanent custody order is appropriate, for the following reasons.

1. The children cannot be with their mother, as her mental illness and her addictions create a constant risk for the children's wellbeing. Any order that would result in the children's return to their father would need to include a condition that the mother's access to them is restricted. If she were the only

parent involved, I would make the permanent custody order without further hesitation.

2. The father does not present the same level of risk for his children as the mother, but he needs to increase his parental capacity, and he needs to create conditions that will keep his children safe.
3. In determining if a temporary custody order would be appropriate with a view of working towards a reunification with the father, perhaps under a supervision order, I must keep in mind the timeline set in the legislation for a determination of the status of the children. Given the age of the children, a decision must be made within a period of twenty-four months from the time of apprehension, which means that any temporary custody order can only be made to last until February 18, 2020.
4. To say this otherwise, it places an onus on Mr. M. to achieve major changes over a period of 12 months. While certain actions may be taken by Mr. M., their outcomes are uncertain.
5. I am mindful of the effects on the children of a delay in making a decision, considering that they have been in continuous care since February 18, 2018, and considering that their lives prior to their apprehension had been like a roller coaster.
6. The longer they remain in care, and with the Cs., the more difficult it will be for them to break the ties that they have with them.
7. I need to balance and assess whether enough may be achieved by the father over the next 12 months to justify delaying a decision to grant permanent custody of these children to the Director of Child and Family Services. There are not enough positive and certain facts to satisfy me that it is worth going this route.
8. Now that the children are stable, I don't think it's fair to them to create this uncertainty. Any further delay in determining their status is causing a prejudice to these children.
9. The children's needs are met with the foster parents now. Given their age and the time spent in care, I believe that they are beyond the point where we

can “try to make it work” with their father. Because there are too many variable factors, some over which the father has no control, I find that it would not be in the children’s best interest to make either a supervision order or a temporary custody order.

[60] Mr. M. is encouraged to continue his journey to wellness. I also encourage him to continue to visit and to have contact with his children. They need to know that he is there for them.

[61] The terms of the permanent custody order:

- The children shall remain in the care and custody of the Director of Child and Family Services until the children reach the age of 16 or until they are adopted;
- The father shall have reasonable and generous access to his children until such time they are placed for adoption;
- The mother shall have access through a Child Protection Worker, and at the discretion of the Child Protection Worker, until such time as the children are placed for adoption.
- The Director shall provide information to the father regarding the children, with respect to placement, education or health issues until such time as the children are placed for adoption.
- The Director shall make efforts to ensure that the children remain connected to their culture.

DATED THIS 4TH DAY OF FEBRUARY, 2019
IN FORT SMITH, NORTHWEST TERRITORIES

CHRISTINE GAGNON, T.J.

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