

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,

G., T.
Born: October, 2010

G., C.
Born: May, 2013

Apprehended: September 26, 2020

**Transcript of the Ruling on Application delivered by the
Honourable Judge D.F. Molloy, sitting in Yellowknife, in the
Northwest Territories, on the 30th day of October, 2020.**

APPEARANCES:

A. Thibodeau:	Counsel for the Director
S. Dhindsa:	Counsel for the Father
S. Uwera:	French Language Interpreter

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pursuant to s. 87 of the *Child and Family Services Act*.**

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Ruling on application

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1 FRIDAY, OCTOBER 30, 2020

2 THE COURT: All right. Let us try it again. Mr.G., I
3 understand you are on the line?

4 R.G.: Yes, I am.

5 THE COURT: All right. And you can hear me fine?

6 R.G.: Yeah, yeah.

7 THE COURT: And I understand we also have an
8 interpreter on the line?

9 THE INTERPRETER: Yes, I am here.

10 THE COURT: All right. Could you identify yourself for
11 the record, please?

12 THE INTERPRETER: Yes, my name is Sonya Uwera.

13 THE COURT: Thank you. I am not sure how this is
14 going to work, Mr. G., in the sense of you will be
15 hearing what the interpreter says over your phone, your
16 phone line, but if at any point you are having difficulty
17 hearing either me or the interpreter, I would like you to
18 bring it to my attention immediately.

19 R.G.: All right. Sounds good.

20 THE COURT: And Madam Interpreter, I have to deliver
21 a decision. How do you prefer we go about it in terms
22 of, do you want to just tell me when you need me to
23 stop, sort of make usable chunks for you to be able to
24 interpret for Mr. G.?

25 THE INTERPRETER: Yes, exactly, because I also want
26 to ask exactly how the client speaks French because
27 it's in English, correct?

1 THE COURT: So I will be giving my decision in English
2 because unfortunately I only speak English you will
3 need to translate what I say to Mr. G. in French. Mr.
4 G., in terms of the interpreter's question, is there
5 anything unique or particular about your level of French
6 that she needs to know?

7 THE COURT: Hello, Mr. G.?

8 R.G.: Yeah.

9 THE COURT: Yes, is there anything particular or
10 unique about your dialect or your French that the
11 interpreter needs to know about?

12 R.G.: Yeah, because I don't understand all the words
13 and the interpreter will be there to explain to me.

14 THE COURT: Okay.

15 THE INTERPRETER: Okay. What I meant, is it
16 Quebecois French or is it French French that you
17 speak?

18 R.G.: French French.

19 THE INTERPRETER: Then I will listen to the judge and
20 then I will stop him when it's going to be a longer
21 sentence, then I will stop him and then I will translate
22 directly.

23 R.G.: Okay. And like I said, if we get noise or
24 something because my kids are here this afternoon, so
25 I'm sorry about that, but they don't have school in the
26 afternoon so they can be loud sometimes.

27 THE COURT: All right. Okay. Well, we will see how it

1 goes. Madam Interpreter, you tell me when you need
2 me to stop. Okay?

3 THE INTERPRETER: Yes, I will.

4 **RULING ON APPLICATION:**

5 THE COURT: On October the 21st, the Court heard an
6 application for a confirmation of the apprehension of
7 Mr. G.'s two children, T. and C. The evidence
8 presented to the Court was entirely in the form of two
9 affidavits from child welfare workers; one affidavit dated
10 September the 26th 2020 and a second affidavit dated
11 October the 16th, 2020.

12 During the proceedings, Mr. G.'s counsel
13 questioned or challenged the use of hearsay evidence
14 by the Director on the apprehension application. On
15 inquiring of counsel in terms of statutory authority for
16 the admission of hearsay in these proceedings, the
17 Court was referred to section 81(3) of the Child and
18 Family Services Act. That section reads:

19 *An affidavit in support of an application or a*
20 *proceeding may be based on information and*
21 *belief.*

22 In *W. (Re)*, 2009 NWTTC 11, Judge Gorin, in
23 considering the issue stated as follows:

24 *I of course appreciate that reasonable grounds*
25 *import a standard far lower than a balance of*
26 *probabilities.*

27 THE INTERPRETER: Can you repeat that, please?

1 THE COURT: "I of course appreciate that reasonable
2 grounds import a standard far lower than a balance of
3 probabilities."

4 THE INTERPRETER: Okay. Would you read that
5 again? It's more the concern that [indiscernible -
6 background noise] if he understands that.

7 THE COURT: "I of course appreciate that reasonable
8 grounds import a standard far lower than a balance of
9 probabilities."

10 THE INTERPRETER: I just explained to him what he
11 just said right now, if we wait for the next sentence, he
12 will understand more of that particular one.

13 THE COURT: Okay. So again, I am quoting from the
14 judge in that case. He goes on to say:

15 *I also appreciate full well that I can base my*
16 *decision on an affiant's information and belief*
17 *pursuant to s. 81(3) of the Child and Family*
18 *Services Act.*

19 THE INTERPRETER: The client is asking if there is
20 going to be a decision today.

21 THE COURT: Yes.

22 R.G.: Okay. Okay.

23 THE COURT: And then to finish that quote:

24 *This provision aside, when determining the*
25 *existence of reasonable grounds it is entirely*
26 *appropriate to consider hearsay evidence.*

27 And that is the end of the quote. Now, I am just going

1 to go back to my own words.

2 THE INTERPRETER: Yes.

3 THE COURT: Okay.

4 THE INTERPRETER: I was explaining you were quoting
5 just from the Superior Court and then now you are
6 going to be speaking in your own words.

7 THE COURT: Yes, thank you. I appreciate this is a little
8 complicated but...

9 THE INTERPRETER: Yes, for sure.

10 R.G.: I have got to have time to understand here, too,
11 because the speaker is not really good.

12 THE INTERPRETER: Okay.

13 THE COURT: That is what I was afraid of. Mr. Clerk,
14 do you know if the audio quality for Mr. G. would be any
15 better if the system was functioning as it is supposed to
16 now?

17 THE CLERK: No, no, because it is all going through the
18 telephones. The only difference is I can't [indiscernible
19 - background noise].

20 THE COURT: Okay.

21 THE CLERK: But the audio itself would be
22 [indiscernible - background noise].

23 THE COURT: Mr. G., I am concerned that you are not
24 able to properly hear the translation.

25 R.G.: It is okay but it is [indiscernible - background
26 noise] but I still do understand, you know, but it's kind of
27 [indiscernible - background noise]. But it's not a

1 problem on this.

2 THE COURT: Okay. If it gets to be a problem that you
3 can't hear, again, I need you to tell me. Okay?

4 R.G.: Yes, I will.

5 THE COURT: All right. Thank you, sir.

6 R.G.: Thank you.

7 THE COURT: In my opinion, the authorization to
8 receive hearsay in section 81(3) appears to be
9 permissive. However, even if the section compels the
10 Court to accept hearsay on this application that does
11 not mean it is exempt from the normal scrutiny required
12 when evaluating hearsay evidence and ultimately
13 determining what, if any, weight can be placed on it.

14 In that regard, I refer to an article written by
15 David M. Paciocco, the title of which is "*The Principled*
16 *use of Hearsay in Civil Cases: A Technical Guide to*
17 *Avoiding Technicality*".

18 All right. You don't need to translate this part,
19 Madam Translator. For the benefit of counsel, that can
20 be found at *2009 CanLIIDocs 138*, David M Paciocco –
21 Canadian Bar Review. And now, Madam Interpreter,
22 unfortunately, I have a rather lengthy quote from that
23 article.

24 THE INTERPRETER: Okay.

25 THE COURT: But if you can explain to Mr. G. that now,
26 instead of my own words, I am going to be reading
27 what David Paciocco wrote in that article.

1 THE INTERPRETER: Okay.

2 R.G.: Okay.

3 THE INTERPRETER: Sorry, would it be better if you
4 read the whole article and then he is going to listen to it.
5 If he hasn't understand any word in it, you are going to
6 stop?

7 THE COURT: Okay.

8 THE INTERPRETER: Yes.

9 THE COURT: All right. So reading from that article
10 then:

11 Courts involved in child welfare cases are most
12 apt to claim this kind of liberal approach to the
13 admission of hearsay. For example, in *E.S. v.*
14 *D.M.*, 1996 CanLII 11653 (NL SC), Puddester J.
15 observed:

16
17 *Clearly, in civil proceedings as here there is no*
18 *accused, and it might be argued that the*
19 *concern as to the absence of cross-examination*
20 *is by that very reason of lesser import. Indeed, it*
21 *might be said that in cases involving child*
22 *protection issues, where the focus is on the best*
23 *interests of the child rather than the rights or*
24 *liabilities of the parents, the absence of the*
25 *ability to cross-examine is for that reason also of*
26 *less weight in the equation, thus justifying a less*
27 *“strict” requirement to prove “necessity” for the*

1 has to be evaluated just like any other evidence. It
2 does not mean that I have to take it at face value.

3 R.G.: Okay. Okay.

4 THE COURT: Okay?

5 R.G.: Yeah, yeah.

6 THE COURT: Okay. I apologize for all the legal
7 language, but it is the way we function. And you know,
8 like I said, it is not ideal, but please bear with me.
9 Okay.

10 R.G.: It's okay but it's kind of [indiscernible -
11 background noise]. That is why I ask the translator to
12 tell me.

13 THE COURT: Yes, okay.

14 R.G.: So thank you for your patience.

15 THE COURT: No worries. When it comes to legal
16 words, Mr. G., a lot of people do not understand them
17 even when they speak English.

18 R.G.: Okay.

19 THE COURT: So continuing on then from Mr.
20 Paciocco's article:

21 It bears notice that after invoking the need for
22 flexibility in sexual offence cases involving
23 children, McLachlin J. ultimately applied the
24 necessity and reliability criteria in *Khan*, and that
25 in *Folland*, Rosenberg J.A. noted the need for
26 some level of reliability before hearsay can gain
27 admission, even at the behest of the accused.

1 R.G.: Okay.

2 THE COURT: And I am coming to the end, thankfully,
3 of the quote. So the last paragraph of the quote says:

4 By and large civil courts appreciate this. Even
5 where rules of practice permit the admission of
6 hearsay, and even in child welfare cases in
7 jurisdictions where statutory provisions veritably
8 invite courts to accept hearsay evidence, the
9 prevailing practice is to consider the principles of
10 necessity and reliability either before admitting
11 the evidence, or openly and overtly when
12 evaluating the evidence. To paraphrase the
13 Court in *Sutherland Estate v. McDonald*, to
14 approach the matter otherwise would be to
15 make the unlikely assumption that the law has
16 “sanctioned the admissibility of hearsay
17 evidence that is unnecessary and unreliable”.
18 It has not. What it has sanctioned is a
19 contextual evaluation of how necessary and
20 reliable hearsay evidence needs to be to gain
21 admission.

22 R.G.: Okay. Okay.

23 THE COURT: Okay?

24 R.G.: Yes, thank you.

25 THE COURT: So thankfully, that is the end of the quote
26 and that is the last quote. Okay?

27 R.G.: Okay. Thank you.

1 THE COURT: In hearing the application initially on Ms.
2 Dhindsa's objection to the hearsay and questioning
3 some of the circumstances pursuant to which the child
4 welfare workers received the information, I challenged
5 her with respect to being able to look behind the
6 affidavits in the absence of any cross-examination of
7 the affiants.

8 R.G.: Okay. I don't understand that part. Can you
9 translate that for me, please?

10 THE INTERPRETER: Okay. Would you repeat the last
11 one, the last sentence, the challenge? From there, that
12 is where my hearing -- I did not hear you all that well.

13 THE COURT: Okay. So initially when Mr. G.'s lawyer,
14 Ms. Dhindsa, questioned the admissibility and reliability
15 of the affidavits and the hearsay, I questioned her about
16 how I could do that without her conducting a cross-
17 examination of the people who swore the affidavits.
18 Generally, I would observe that unless there are
19 problems or issues on the face of the affidavit that
20 indicate problems with the reliability of the information,
21 some form of -- sorry.

22 R.G.: Yeah, yeah, I understand that part.

23 THE INTERPRETER: Okay. He understood. Sorry,
24 yes, go ahead.

25 THE COURT: Okay. So in the absence of something
26 on the face of the affidavit, generally my view is that
27 some form of cross-examination would be required to

1 look behind the affidavits. Okay.

2 R.G.: Yeah.

3 THE COURT: Just bear with me for a second. My
4 computer timed out. Sorry. Is it okay now, Mr. G.?

5 R.G.: Yes, yes. Sorry. I need to look after my kids, too.

6 THE COURT: No, I appreciate the realities of having
7 children in your home. It is --

8 R.G.: Thank you so much.

9 THE COURT: It is okay. In this case, having had the
10 opportunity to further reflect on the matter and to
11 consider some of the examples cited by Ms. Dhindsa
12 and also other examples noted by myself, there are
13 concerns that the Court has about the reliability of the
14 information in the affidavit and the weight that the Court
15 can place upon it.

16 R.G.: Okay. Sorry, a second.

17 THE COURT: Okay?

18 R.G.: Yeah.

19 THE COURT: Okay. Now, I will make comments on
20 my review of the September the 26th affidavit,
21 September 26th also being the date upon which the
22 children were apprehended by the Director from Mr. G.
23 On that date, the affidavit indicates that a call was
24 received at 7:58 p.m. from a confidential source that
25 Mr. G. was drunk, stumbling and said T. was scared.
26 At 8:33 p.m. -- and I should note that that informant
27 indicated that he or she had received the information

1 from the children.

2 THE INTERPRETER: He was mentioning like he
3 [indiscernible - background noise] that it's not right.

4 THE COURT: I am not saying it is right. I am just
5 saying what is in the affidavit, Mr. G.

6 R.G.: Okay, okay.

7 THE COURT: Okay.

8 R.G.: Yeah.

9 THE COURT: So this is just the part of it where I say
10 what is in the affidavit. Later on, I will say what if any
11 use I am going to make of it. Okay?

12 R.G.: Okay. That's fine.

13 THE COURT: Okay.

14 R.G.: Thank you.

15 THE COURT: I note from the affidavit that a child
16 welfare worker, together with at least one member of
17 the RCMP attended at Mr. G.'s house at 8:33 p.m. The
18 affidavit indicates that, on arrival, everything appeared
19 fairly calm. Mr. G. was watching a movie with the
20 children. The only alcohol or container on the premises
21 was a half-full mickey of vodka. Mr. G. admitted to
22 having a couple of sips of alcohol.

23 There were no signs of the children being in
24 distress. There was no sign of them being scared or
25 mistreated, no indication that the house was in disarray
26 or any other pressing sign that the children were in
27 immediate need of protection or in need of protection at

1 all.

2 On October the 1st, I note, and this is
3 unfortunately in the October affidavit, it is indicated that
4 on October the 1st the child welfare worker called the
5 RCMP to ask what the RCMP had in their notes about
6 Mr. G.'s condition on that date (September 26th) in
7 respect of alcohol, and the child welfare worker in the
8 affidavit noted that she was told that the police notes
9 indicated that Mr. G. was noted to be intoxicated. In
10 the absence of hearing from the officer or more
11 particulars from the officer, it is very difficult for the
12 Court to ascribe any level of impairment or an exact
13 level of impairment to Mr. G. "Intoxicated" has many
14 meanings. It can range from simply being under the
15 influence of a small amount of alcohol or it could
16 include being drunk to the point of stumbling.

17 From the observations of the child welfare
18 worker, it is clear that Mr. G. was nowhere near the
19 higher end of the spectrum of impairment that would
20 be, in my opinion, stumbling and incoherent. Whatever
21 level of intoxication he had, I would point to it as
22 undermining and challenging the reliability of the
23 informant who called Child Welfare at 7:15 p.m.,
24 reporting that Mr. G. was drunk and stumbling.

25 A mere half hour later or just over a half hour
26 later when the child welfare worker attended with the
27 police, the scene bore little resemblance to what had

1 been represented by the informant. The question
2 becomes, and I do not have to speculate, but the
3 question becomes whether the informant
4 misrepresented what they were told by the children,
5 possibly the children misrepresented the state of their
6 father's impairment to the informant, if they related it to
7 the informant at all.

8 But at the end of the day, I do not need to
9 decide what the underpinnings of the unreliability of the
10 information was. I am satisfied that that information
11 was not reliable, and therefore I place little weight,
12 extremely little weight, on that information.

13 Further, in the affidavit it indicates that T. had
14 said that Mr. G. probably drank beer, and albeit, you
15 have to appreciate that it is in the words of a ten-year-
16 old, as he was not very crazy in T.'s description.
17 Throughout the affidavits, I would note that there are
18 references to the children clearly appreciating --
19 unfortunately that they are able to appreciate it -- being
20 able to distinguish between their father being extremely
21 impaired, which at least C. refers to as being cuckoo, I
22 believe she is seven years of age, but in the words of a
23 seven-year-old.

24 Clearly, they are able to distinguish between
25 when their father is in an extreme state of intoxication
26 and when he is not. And again, if T. is able to
27 distinguish that, it leads me to question the reliability of

1 the informant's call at 7:58 p.m. that alleges that T. said
2 that he was scared and that his father was drunk and
3 stumbling.

4 Moving on to the October 16th affidavit, again, in
5 assessing its content and its reliability, I note it states in
6 the affidavit that third parties have reported violence
7 towards the children. It also notes, however, that the
8 children have not reported any such violence, and I can
9 only presume that child welfare authorities have not
10 seen any evidence of violence or else it would be
11 contained in the affidavit. The only evidence of
12 violence towards the children is in reference to previous
13 proceedings whereby a friend of Mr. G.'s threw a chair
14 at C. that resulted in other child welfare proceedings
15 and ultimately in the children being taken into the
16 custody of the Director for a period of time, but there is
17 absolutely no evidence of violence engaged in by Mr.
18 G. towards his children.

19 In terms of evaluating the grounds that existed
20 on September 26th, the child welfare workers of course
21 are entitled to rely on the history of their dealings with
22 Mr. G. and, in that regard, the affidavit presents a more
23 detailed picture of their dealings with him over a period
24 of a number of months. It notes that, after the incident
25 with the throwing of the chair, C., in being interviewed
26 by the child welfare workers, reported that she missed
27 Mr. G. letting her watch TV but, more importantly, from

1 my point of view, giving her bedtime snacks and tucking
2 her in at night.

3 While I wish not to be mistaken to say that that,
4 in and of itself, is evidence of good parenting, it is
5 certainly a departure from the suggestion that Mr. G.'s
6 children are not well cared for by him. Certainly, the
7 children have, as is evident from the affidavit, a
8 significant attachment to him, prefer to be with him, and
9 their only grievance, their only concern -- and again this
10 is -- Mr. G., I am not impressed by this, that the children
11 indicate that when you are very drunk that it is scary for
12 them.

13 In any event, the children, after being
14 apprehended because of the incident with his friend,
15 were returned to Mr. G.'s care on May 6th, 2020, and I
16 note on May the 13th Mr. G. entered a voluntary
17 Support Services Agreement. On May the 20th, the
18 affidavit indicates that during a visit by Child Welfare,
19 Mr. G. was sober. Mr. G. also inquired about daycare
20 as he hoped to return to work.

21 On May the 28th, Mr. G. requested support for
22 daycare. On June the 9th, Mr. G. had to go to
23 Yellowknife for a CT scan and made arrangements for
24 the kids to stay with their grandmother who, as I will
25 note later on in my reasons, is a social worker who
26 works with the affiants and other child welfare workers
27 who have been involved with Mr. G.'s file.

1 the kitchen table, hardly consistent with what had been
2 represented by the informant and leads to serious
3 questions about the ability of the child welfare
4 authorities to rely on information from that informant.

5 On June the 28th, the same date, despite the
6 fact that they had been at his house at 6:15 p.m.,
7 another report was received at 7:35 p.m. that Mr. G.
8 was intoxicated. The child welfare worker did not return
9 to Mr. G.'s residence to assess his condition and simply
10 noted that on the phone when they called Mr. G. that he
11 appeared to have slurred speech.

12 On July 1st, Mr. G. did admit to having
13 consumed two beers, but there is no evidence again of
14 the level of intoxication that was represented about,
15 again, 45 minutes after -- well, it would have been less
16 than 45 minutes after the workers had been there that
17 he was intoxicated. Again, one has to question the
18 reliability of that informant and the degree to which the
19 Court can rely on or place any significant weight on that
20 information.

21 On June the 29th, a visit by the child welfare
22 worker confirmed that all was okay. On July 2nd, the
23 child welfare worker visited Mr. G.'s home, saw both
24 children, no concerns with their well-being were noted.
25 On July 9th, a child welfare worker attended Mr. G.'s
26 house with a grocery voucher, again, no concerns were
27 noted.

1 On July the 14th, a family member reported that
2 Mr. G. was drunk and that RCMP attended his house.
3 The RCMP advised, on being contacted by the child
4 welfare authorities that while they had attended at Mr.
5 G.'s house, it was at the request of a drunk woman who
6 said that she could stay at Mr. G.'s home. I assume, as
7 is normal in these circumstances that the police were
8 trying to find a responsible adult to leave the intoxicated
9 female with, as opposed to lodging her in cells or some
10 other manner of dealing with an intoxicated person.

11 Quite responsibly, Mr. G. denied that lady entry
12 to his home, and additionally I note that the RCMP
13 advised that he appeared sober. Again, the child
14 welfare authorities faced with that information would
15 have to question the reliability of that family member's
16 report and the information provided by that family
17 member, given the stark contrast between the
18 information as it was reported by the family member
19 informant and the reality of what was encountered or
20 what occurred.

21 On July 16th, a child welfare worker interviewed
22 the children about the day the neighbour would not let
23 them go home and the neighbour reported to child
24 welfare that Mr. G. was drunk. Contrary to that report,
25 T. advised in the interview that his father was not
26 drinking that day and that there were no issues.

27 C., in the words of a seven-year-old, went on to

1 advise that Mr. G. had not been cuckoo lately, again, as
2 I previously stated, "cuckoo" being her word for her
3 father being in an extreme state of intoxication. Both
4 children indicated as well that if their father was
5 impaired or "cuckoo" in the words of C., that they knew
6 to call their grandmother for help.

7 On July 16th, a child welfare worker advised Mr.
8 G. that there was no immediate need for intervention,
9 but cautioned him that it could quickly get to that point if
10 he allowed his drinking to get out of control. I take this
11 as a representation by child welfare authorities that
12 from the time that the children had been returned to him
13 in May, up to that point in time, they were satisfied that
14 Mr. G.'s drinking had not gotten out of control and there
15 was no apparent need for immediate intervention,
16 which I take it would be in the form of apprehending his
17 children.

18 On July 9th, Mr. G. requested support for
19 groceries from the child welfare authorities, again
20 demonstrating responsible parenting.

21 In terms of items of evidence which gives rise
22 potentially for the Court to be concerned about the
23 children's welfare, the most damning of the
24 representations in the affidavit of October the 16th are
25 the August the 5th reference to the child welfare worker
26 having phoned Mr. G. and assessing him as sounding
27 like he was drinking. Mr. G. and his friend, according to

1 the affidavit, confirmed that he had been drinking to
2 excess for about five days.

3 The child welfare worker attended on that date
4 at 4:25 p.m., however, noted that while Mr. G.
5 appeared intoxicated, he was not grossly impaired. C.,
6 I believe, who was the only child at home at the time,
7 appeared fine, the house was fine, and no other
8 concerns were noted.

9 On August the 7th, child welfare workers visited,
10 noted that Mr. G. appeared sober, the house was tidy,
11 no obvious signs of alcohol, observed C. who appeared
12 to be fine. On August the 14th, C. advised that Mr. G.
13 had not been drinking since the last time the child
14 welfare worker had visited her house, but I note she
15 also said that he had been drunk the day before. I am
16 assuming she meant drunk the day before that he
17 visited the house. Again, as a matter of general
18 concern, C., as I indicated earlier, which is very
19 unfortunate, indicated that she is scared when Mr. G. is
20 drunk.

21 On August the 19th, in an interview with the
22 children with the child welfare worker, the children
23 advised that they wished that Mr. G., quite naturally,
24 stop drinking. T. also advised that his grandmother's
25 boyfriend also struggles with alcohol, and I note that
26 that is a place where it does not appear that the child
27 welfare authorities have any issue with the children

1 going to when they allege Mr. G. is intoxicated.

2 On August the 25th, child welfare workers
3 visited Mr. G.'s home with a purchase order for
4 children's clothing. No concerns were noted. On
5 August the 27th, a child welfare worker attended Mr.
6 G.'s home with some clothing for the children and noted
7 that Mr. G. was sober.

8 On September the 2nd, a child welfare worker
9 visited to check up on, in her words, Mr. G. On arrival,
10 he was observed to be cooking supper and sober. No
11 concerns were noted.

12 On September the 13th, the child welfare
13 authorities received a report at 8:00 p.m. that Mr. G.
14 was drunk. Again, the allegation was said to be based
15 on what the informant had been told by the children.
16 Again, unfortunately, in terms of the reliability of the
17 information, on attending shortly thereafter at Mr. G.'s
18 home, he was noted to be sober, and a full house
19 check, a very invasive search of his house, found no
20 alcohol in the home.

21 Again, one has to question the reliability of that
22 informant, whether it is the same informant as has
23 provided some of the other information which proved to
24 be unreliable on independent verification or attempts at
25 independent verification by the child welfare authorities,
26 and again, it undermines the reliability of the
27 information in the affidavit and causes the Court to be

1 of the opinion that little weight can be placed on much
2 of the informant information, especially to the degree
3 that it is specifically, most specifically, noted to be
4 unreliable based upon observations of the attending
5 child welfare authorities.

6 On September 14th, the child's grandmother,
7 who is also a social worker who I understand works
8 with some of the social workers that have been
9 involved with Mr. G.'s file in Hay River, reported that Mr.
10 G. was drunk the previous evening, and she knew that
11 the child welfare worker had visited the home. The
12 grandmother said that she was talking to Mr. G. and
13 knew he was drunk from the way he sounded on the
14 phone.

15 Given the lack of independent verification or, in
16 fact, conflicting verification, I have to note while it is not
17 strictly necessary for the resolution of this file, given the
18 unreliability of what appears to be some of her
19 information, and given that she is in a close working
20 relationship with the people who apprehended or the
21 workers who apprehended Mr. G.'s children, one really
22 has to wonder about a conflict of interest the
23 motivation of the grandmother social worker who I note
24 -- and again, I do not have to ascribe a motive to her,
25 her information is unreliable. But I do note of concern
26 to me is that in terms of potential motivations she is
27 willing to take the children on a permanent basis, but

1 not to assist Mr. G. on a temporary basis. One has to
2 question whether she has an interest in seeing the
3 children removed from Mr. G. on a permanent basis.

4 On September the 16th, a child welfare worker
5 visited the home and, while the worker noted that Mr.
6 G.'s eyes were glossy, he was steady on his feet and
7 his speech was clear. On September the 18th, Mr. G.
8 requested help with the groceries. Mr. G. attended to
9 pick up a voucher and was sober.

10 On October the 5th, the child welfare worker
11 visited the home. Mr. G. was noted to be sober. On
12 October the 6th, the child welfare worker interviewed C.
13 who, as I have alluded to already, stated she is scared
14 when Mr. G. drinks, and said sometimes he gets mad
15 when he drinks and he swears. And unfortunately for
16 any child in that situation, she indicated that she is
17 reluctant to tell on Mr. G. because she does not want to
18 be sent to a foster home.

19 On October the 7th, the child welfare worker
20 interviewed T. who said that all was fine when the child
21 welfare worker, the authorities, attended at his home
22 and apprehended him on September the 26th. On
23 October the 9th, during the weekend visitation, the child
24 welfare worker attended Mr. G.'s home. Mr. G. was
25 sober. The children were observed to be fine and
26 happy to be at home.

27 While I find that the hearsay evidence is

1 admissible, for the many reasons I have enumerated, I
2 am unable to place significant, if any, weight on the
3 majority of it because of the conflict between the reality
4 of the observations of the child welfare authorities on
5 attending at Mr. G.'s home, as contrasted with the
6 information that was reported to them by the various
7 informants that made the allegations that Mr. G. on all
8 of the various occasions was so drunk that he was
9 unable to care for his children.

10 Of course, one then has to go on to consider
11 what any of this means or what any of my conclusions
12 mean in terms of the test for confirmation of
13 apprehension as set out in section 12.4 of the *Act*. In
14 referencing that section, it says:

15 *Where on hearing of an application for an*
16 *apprehension order the Court determines that:*
17 *(a) there are reasonable grounds to believe that*
18 *the child needs protection and;*
19 *(b) that the person who apprehended the child*
20 *had, at the time of the apprehension, reasonable*
21 *grounds to believe that the children's health or*
22 *safety would be in danger if the child were*
23 *returned to a person having lawful custody of the*
24 *child, the Court shall make an order confirming*
25 *the apprehension.*

26 While I conclude that hearsay is admissible for
27 the reasons I enumerated at the beginning of my

1 reasons, it does not mean that the hearsay does not
2 have to be carefully scrutinized and evaluated by the
3 court, particularly where here the contradictions and
4 unreliability are glaringly evident from the face of the
5 affidavit.

6 On that basis, I have concluded that at the time
7 of the apprehension that reasonable grounds did not
8 exist and that the children should not have been
9 apprehended at that time. I do not need to consider
10 whether there are currently also reasonable grounds to
11 believe that the children are in need of protection, and
12 so I will not pass judgment on that ground. The
13 decision that there were no grounds to apprehend the
14 children at the time of their apprehension is dispositive
15 of this application. Now, Mr. G., I wish to make
16 something clear to you sir.

17 R.G.: Yes, thank you, I understand everything you said.

18 THE COURT: Well, before you thank me, before you
19 thank me, let me say this. It is clear from the history on
20 the file that, you know, I appreciate that your wife's
21 passing and being a single parent has been a struggle
22 for you. I am not indifferent to that. But on the other
23 side of the coin, I do not know what you need to
24 convince you that you need to stop drinking, or if you
25 are going to drink, you know, to do as you have in the
26 past and as you did under the Voluntary Care Plan, to
27 find alternate sources of supervision for your children.

1 I caution you because, while you may feel that
2 this is a victory, it is not an outright victory and you will
3 continue to be under scrutiny as long as you continue
4 to drink, especially if you drink to the point of
5 intoxication or gross impairment I guess. Most of the
6 evidence in the affidavit indicates lower levels of
7 impairment, but if you are grossly impaired and you
8 continue, or if you resume that pattern of drinking in the
9 future, you know yourself that you are at risk of losing
10 your children.

11 R.G.: Yes.

12 THE COURT: And moreover, you know, in the long
13 term, like I said, I appreciate your personal
14 circumstances and the difficulties of being a single
15 parent and the untimely death of your wife, but, sir, that
16 is not an excuse, and just because the apprehension
17 was not valid on this occasion, it does not mean that
18 the Court could not find it to be valid on a future
19 occasion. And so I ask you to govern yourself and take
20 what I am saying into consideration because, while I
21 am satisfied that there were no grounds to apprehend
22 your children on the date in question, you know, any
23 reasonable person would think about the
24 circumstances of their children and over the long term
25 what your drinking leads to. So you know I appreciate
26 you are probably happy with my decision, but I do not
27 want you to take it as *carte blanche* to go back to resort

1 to the behaviours that in the past resulted in the
2 apprehension of your children. Okay?

3 R.G.: Yes, I am okay, and thank you so much, Your
4 Honour. I made a decision to move back to New
5 Brunswick. I am from there, right? So yeah, I would
6 like to start a new life down home so I've got lots of
7 support down there, better and happier. So I plan to
8 move down home with my kids which will be better for
9 them, too.

10 THE COURT: Well, it does not matter what province or
11 jurisdiction you go to, Mr. G., as I said, if you resort --
12 if you go back to the patterns of behaviour that you
13 exhibited in the past, you are going to have issues with
14 the child welfare authorities in whatever jurisdiction that
15 you go to.

16 R.G.: Yes, I do understand.

17 THE COURT: Okay. Sir, that is it. You can -- counsel,
18 are there any questions?

19 A. THIBODEAU: No, Your Honour.

20 THE COURT: All right. That is it, Mr. G., you can
21 disconnect your call. Madam Interpreter, thank you
22 very much for your assistance.

23 R.G.: So [indiscernible - background noise] can stay
24 with me now?

25 THE COURT: Ms. Dhindsa will give you a call to
26 discuss the implications of my decision. Okay.

27 R.G.: [Indiscernible - background noise].

1 THE COURT: I said --

2 THE INTERPRETER: He is asking if are the kids
3 staying with him or what is going to be. There is many
4 other things going on right now.

5 THE COURT: When you sign off, when you hang up on
6 this call, Mr. G., Ms. Dhindsa is here, I am assuming,
7 Ms. Dhindsa that you will call him right away to explain
8 what will happen from here?

9 S. DHINDSA: Yes, that's correct, Your Honour. I will
10 give Mr. G. a call after these proceedings.

11 R.G.: Okay.

12 THE COURT: Okay. Mr. G., your lawyer is going to call
13 you right away to explain what the consequences of my
14 decision are.

15 R.G.: Okay. Okay. Thank you so much.

16 THE COURT: All right. Sir, you can hang up now.

17 R.G.: Okay. Thank you.

18 THE COURT: Do you want him to hang up or not?

19 S. DHINDSA: Yes.

20 THE COURT: Okay.

21 THE INTERPRETER: You want me to hang up?

22 THE COURT: Yes, please hang up.

23 THE INTERPRETER: Okay.

24 S. DHINDSA: Just as a way of a procedural matter,
25 should an order be taken from the application, Your
26 Honour?

27 THE COURT: Well, I guess the only requirement, as I

1 read it -- the only requirement as I read it in section
2 12.4, but subject to hearing from Ms. Thibodeau, is that
3 the Court shall make an order if I am satisfied that the
4 apprehension should be confirmed. I do not think I am
5 required to make an order when I refuse to confirm or
6 when I decline to confirm the apprehension order.

7 I would expect under the normal operation of
8 things that the children would simply be now left in the
9 care of Mr. G., but because really that is secondary to
10 my role, how that plays out now is up for you to discuss
11 with the Director, and I guess if you are not satisfied, to
12 come back to court.

13 A. THIBODEAU: And that's my understanding as well,
14 Your Honour, that when an apprehension is not
15 confirmed, that an order is not prepared. Given that
16 there is no further order made and the children are not
17 declared to be in need of any interim care that their
18 care would no longer be in the care of the Director.

19 THE COURT: All right. All I can say, Ms. Dhindsa, if
20 there is any issue, I give you leave to come back to
21 seek -- I mean, I do not know -- I think I am *functus* as
22 of right now. I do not know if I have any jurisdiction if
23 there is a problem. I guess if there is a problem, I am
24 prepared to hear from you as to if I have jurisdiction, but
25 I am hoping that that is unnecessary in all of the
26 circumstances. I suspect it would be unnecessary, Ms.
27 Thibodeau.

1 A. THIBODEAU: I don't anticipate there being any
2 issues, Your Honour, and I will ensure that I am in
3 touch with the child protection workers --

4 THE COURT: Okay.

5 A. THIBODEAU: -- to explain today's decision.

6 THE COURT: Thank you both for your obvious effort
7 and work that you have put into this file.

8 S. DHINDSA: Thank you, Your Honour.

9

10 **(PROCEEDINGS CONCLUDED)**

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12

13 **CERTIFICATE OF TRANSCRIPT**

14 Neesons, the undersigned, hereby certify that the foregoing
15 pages are a complete and accurate transcript of the
16 proceedings transcribed from the audio recording to the best
17 of our skill and ability.

18

19 Dated at the City of Toronto, in the Province of Ontario, this
20 24th day of November, 2020.

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Kim Neeson

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Principal

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