

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Minister of Community Services v. D.R. and R.P.*, 2017 NSSC 170

Date: 2017-06-22
No. SFHCFSA-099449
Registry: Halifax

Between:

Minister of Community Services

Applicant

v.

D.R. and R.P.

Respondents

LIBRARY HEADING

Judge: The Honourable Justice Leslie J. Dellapinna

Heard: May 4,5,8 and 9, 2017 in Halifax, Nova Scotia

Subject: A Motion for Permanent Care and Custody pursuant to the *Children and Family Services Act*

Summary: The Respondents' infant son was taken into care at birth by the Agency pursuant to section 33(1) of the *Children and Family Services Act*.
It was the position of the Agency that the Respondents were unable to adequately care for the child due primarily to their own cognitive and other delays. Further, that there was no family member or member of the community with whom the child could be placed.
The Respondent mother did not present evidence or present a plan.
The Respondent father and the paternal grand-mother presented plans.

Issues: Should the Respondents' son be placed in the permanent care and custody of the Agency or would some less intrusive order - including dismissal – be more appropriate?

Result: Permanent care and custody was ordered. The child continued to be in need of protective services. Neither of the parents nor the paternal grand-mother could adequately protect the child from harm (or substantial risk of harm). No other family member or community member presented themselves as a possible placement. The circumstances leading the Court to believe that permanent care and custody was the appropriate disposition were not likely to change before the expiration of the timelines stipulated by the *Act*.

Fact specific.

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Heard: May 4,5, 8 and 9, 2017, in Halifax, Nova Scotia

Counsel: Jean Webb for the Applicant
Lola Gilmer for the Respondent, R.P.

By the Court:

[1] By way of a motion pursuant to section 42(1)(f) of the *Children and Family Services Act*, S.N.S. 1990, c.5 (“the *Act*”) the Minister of Community Services (“the Agency”) sought an order for the permanent care and custody of N.R. born February 4, 2016. N.R. is the son of D.R. and R.P.. The motion was opposed by R.P..

Background

[2] On the day after his birth N.R. was taken into care by the Agency pursuant to section 33(1) of the *Act*. N.R.’s mother, D.R., and father, R.P., were known to the Agency.

[3] When D.R. was approximately 13 years of age she was taken into care by the Agency as a result of domestic violence and physical abuse in her mother’s home. She was subsequently placed in the permanent care and custody of the Agency until her 19th birthday.

[4] D.R. had three other children prior to N.R.’s birth. Her first child was taken into care soon after his birth when D.R. was 21 years of age. After a trial that child was placed in the permanent care and custody of the Agency in January 2012. A second child born in March 2013 was taken into care at birth. After a trial in 2014 that child too was placed in the permanent care and custody of the Agency. D.R.’s third child was born in May 2015. That child was also taken into care at birth. The Agency by that time had two psychological assessments done of D.R. which noted her global cognitive limitations with most abilities being in the borderline range. D.R. consented to her third child being placed in the permanent care and custody of the Agency.

[5] D.R.’s first three children were from different fathers, none of them being R.P..

[6] The Agency also had extensive involvement with R.P. and his parents when he was a child. R.P. is one of five sons born to L.P. (his mother) and R.D.P. (his father). When R.P. was approximately 11 years of age he and three of his siblings were taken into care. According to the affidavit of Ms. Christie MacNutt, a social

worker employed by the Dartmouth District Office of the Agency, sworn February 9, 2016:

“In 2001, it was determined that [R.P.], then eleven (11) years of age, had learning difficulties, speech delays, social delays, and global development delays. [R.P. and his three siblings] were taken into care based on concerns regarding physical abuse, physical neglect, and inadequate supervision.”

[7] In paragraphs 16 and 17 of the same affidavit Ms. MacNutt said:

“ 16. [L.P.] and [R.D.P.] participated in a parental capacity assessment, which was prepared by Dr. Lowell Blood of IWK Assessment Services in November 2001. In the parental capacity assessment, Dr. Lowell Blood indicated the family has experienced a deterioration in its functioning since the Agency first intervened. Dr. Lowell Blood stated that both [L.P.] and [R.D.P.] were unable to provide even marginally acceptable care for any sustained period. Dr. Lowell Blood went on to say this inability appears related to a number of factors, including intellectual limitations, unaddressed mental health concerns, poor judgement, and a resistance to change.

17. Dr. Lowell Blood further stated that [L.P.] and [R.D.P.] appeared unable or unwilling to accept responsibility for the damage that occurred to the their (sic) children while in their care and little motivation to alter their belief towards parenting but rather offered excuses and placed their own needs above those of their children. Dr. Lowell Blood concluded that the likelihood that they, meaning [L.P.] and [R.D.P.], would alter this pattern of parenting would be considered extremely slim.”

The report of Dr. Blood to which Ms. McNutt referred was entered into evidence.

[8] R.P. and three of his four siblings were placed in the Agency’s permanent care and custody in 2002. His oldest brother remained in the care of L.P.’s mother.

[9] A little over three weeks prior to N.R.’s birth, L.P. spoke to Intake Social Worker, Kasey Lebars, to advise the Agency of the pending birth of N.R.. At the time D.R. and R.P. were residing with L.P. and her husband. In L.P.’s affidavit at paragraph 20 she said:

“We all knew [D.R.] had a past history with the Agency, and that she had three children taken into care from past relationships. I informed [D.R.] that she needed

to let the Agency know she was expecting, so we could all work together to put a plan in place to keep the baby.”

During her cross-examination L.P. said that in her opinion D.R. could not care for N.R..

[10] Following that phone call arrangements were made by the Agency for a home visit in early February, but before any home visit could take place N.R. was born.

[11] Based on the Agency’s knowledge of the parties and R.P.’s parents, the decision was made to take N.R. into care.

History of Proceedings

[12] The following is a brief history of the Court proceedings:

1. The Notice of Child Protection Application was filed with the Court on February 9, 2016 alleging that N.R. was a child in need of protective services.
2. The interim hearing began on February 12, 2016 and ended on March 2, 2016. On both occasions N.R. was ordered to be in the care and custody of the Agency and the Respondents were granted access to N.R. “upon terms and conditions and with levels of supervision” as may be arranged from time to time by the Agency. By the conclusion of the interim hearing a family support worker was made available to the Respondents.
3. With the consent of the Respondents N.R. was found to be a child in need of protective services on May 9, 2016. N.R. continued to be in the care and custody of the Agency and the Respondents continued to have the same terms of access as was previously ordered.
4. A pre-trial conference prior to the disposition hearing took place on June 21, 2016. On or about June 9 the Agency filed a Notice of Motion for Disposition Order by which the Agency sought an order for permanent care and custody of N.R.. At the conference I scheduled a fifteen minute appearance for the disposition hearing to take place on July 21, 2016 in anticipation of consent by the Respondents to a Temporary Care and Custody Order. I also scheduled a half-day settlement conference to take place in October 2016 and I scheduled a

five day trial commencing November 16, 2016 for the hearing of the Agency's motion for permanent care.

5. On July 21, 2016 the first disposition order was granted with the consent of the Respondents. The Minister continued to have temporary care and custody of N.R.. The Respondents' access continued, as arranged by the Agency. The Respondents continued to receive the services of a family support worker.
6. The first review of the Temporary Care and Custody Order took place on October 6, 2016. The Respondents consented to an order containing essentially the same terms as was contained in the first disposition order. Up to that point in time R.P. had refused to take part in a psychological assessment.
7. On October 13, 2016 the Respondents attended a settlement conference before the Honourable Justice MacDonald. At a subsequent review hearing before me on October 24, 2016 I was advised that at the settlement conference R.P. had agreed to participate in a psychological assessment and individual counselling. The terms of the October 6 order were renewed by consent and the trial dates that had been scheduled for November 2016 were removed from the Court docket to allow for the assessment.
8. A further review hearing took place on January 23, 2017. All of the parties consented to the renewal of the terms of the previous Temporary Care and Custody Order. Counsel also requested a date for another settlement conference as well as new trial dates in the event an agreement could not be reached.
9. The second settlement conference took place before the Honourable Justice Chiasson on February 16, 2017. By that time the results of R.P.'s psychological assessment were available. No agreement was reached on a final disposition order.
10. A further review hearing took place on March 9, 2017. The Temporary Care and Custody Order of January 23, 2017 was renewed by consent and trial dates were scheduled for the week of May 4, 2017. The Court was advised by counsel for D.R. that D.R. would not be presenting any plan of care and would not be offering any evidence at trial.
11. Following the trial I reserved my decision.

Services Provided

[13] In addition to providing a foster placement for N.R. and making access arrangements for the Respondents, the Agency also provided R.P. with a family support worker whose primary function was to provide him with parenting education sessions. A psychological assessment of R.P. was done by Ms. Kristen Bailey, and Ms. Rea Shaw provided R.P. with counselling to help him manage his anger, develop coping skills, gain insight into health concerns and to assist him in resolving his feelings regarding his ex-partner (D.R.).

[14] In addition to the services provided by the Agency, R.P. participated in a parenting program called Nobody's Perfect where he says he learned about safety, managing children's behaviour, nutrition and cooking, the importance of playing with N.R. and recognizing common childhood illnesses.

Issue

[15] The issue to be determined was whether N.R. should be placed in the permanent care and custody of the Agency or if some less intrusive order – including dismissal – would be appropriate.

Positions of the Parties

[16] The Agency asked the Court to place N.R. in the permanent care and custody of the Agency. The Agency's long-term plan for N.R. is adoption. The Agency believed that if N.R. was placed in the care of his father or his paternal grand-parents, he would be at risk of harm both physically and emotionally. The Agency believed that R.P. and his parents lacked the necessary parenting skills to adequately care for N.R..

[17] R.P. sought to have N.R. placed in his care and custody. While it was his intention to continue living with his parents and his two brothers in his parents' home, he indicated that eventually he would like to live on his own with N.R.. R.P.'s mother and two of brothers expressed a willingness to assist him with the care of N.R..

[18] In the event the Court concluded that it would not be appropriate to place N.R. in the care of his father, he proposed that N.R. be placed in the care of his mother, L.P., under a third party supervision order pursuant to sections 46 and 42(1)(c) of the *Act* after which, L.P. stated, it would be her intention to seek an order for custody under the *Maintenance and Custody Act*, R.S.N.S., 1989, now the *Parenting and Support Act*, before July 21, 2017 which is the date by which all disposition orders under the current proceedings must come to an end.

Witnesses

[19] Seven witnesses testified on behalf of the Agency. The Agency also gave notice to R.P. that other witnesses employed by the Agency who had involvement with the Respondents or N.R. would be made available for cross-examination purposes upon request and the Agency would also make available any other requested professionals with previous involvement with the Respondents or N.R..

[20] Ms. Kristen M. Bailey gave evidence on behalf of the Agency. With the consent of R.P.'s counsel, she gave evidence as an expert in the area of psychology and in particular in conducting cognitive and mental health assessments for adults. Ms. Bailey performed a psychological assessment of R.P. on November 30 and December 1, 2016 and provided a report to the parties and the Court. The assessment was done at the request of the Agency and with R.P.'s cooperation.

[21] According to Ms. Bailey's assessment report:

- R.P.'s Full Scale IQ fell within the low average range (FSIQ; 86), and specifically his FSIQ ranked at the 18th percentile indicating that he scored higher than just 18% of other individuals of the same age. He performed in the Low Average range on an index of verbal thinking and reasoning (VCI; 18th percentile), in the Average range on an index assessing visual thinking and reasoning (PRI; 50th percentile), and in the Low Average range on a measure of his ability to briefly hold information in mind while actively using that information (WMI; 13th percentile). He also achieved a score in the Low Average range on a measure of cognitive processing efficiency (18th percentile).
- Tests performed to measure R.P.'s ability to follow and understand verbal instructions, to express himself orally, reading comprehension, spelling and math suggested that his ability to follow verbal instructions was Extremely Low, his ability to read was also Extremely Low to Borderline

(the 8th percentile or less) and Borderline to Extremely Low “across all mathematics tasks”. In summary, Ms. Bailey stated at page 11 of her report, “[R.P.’s] performance across nearly all of the functional academic tasks was indicative of skills that are below the level expected of his age. These scores suggest that [R.P.] likely has difficulty expressing his thoughts (i.e., communicating with DCS employees, doctors, etc.), understanding complex texts (i.e., forms, lease agreements, appliance instructions, etc.), and using mathematics in daily life (i.e., budgeting, purchasing items from a store, following recipes, paying bills, estimating time, etc.)”.

- R.P.’s memory for verbal information was found to be variable. Test results suggested that he benefits from hearing information multiple times but that he may have difficulty retaining information over a delayed period and may benefit from prompts to help him remember information over a delay.
- Tests were performed to measure R.P.’s executive functioning which refers to higher-level cognitive abilities that enable an individual to successfully engage in independent goal-directed behaviour. Executive functions are needed to complete tasks that require complex behaviour or involve multiple steps. Ms. Bailey concluded that her findings revealed that R.P. demonstrated average abilities (25th to 74th percentile) in most areas of executive function.
- Tests were performed to provide an estimate of R.P.’s risk of physical child abuse. In her summary on page 19 of her report Ms. Bailey stated:

“...his responses on the CAPI [Child Abuse Potential Inventory] suggest that he is experiencing several personal difficulties (e.g., emotional problems, poor stress management, unhappiness) and holds some problematic beliefs about children (i.e., beliefs that children should be obedient, neat, orderly) that may increase his risk of physical abuse towards his child. Second, his responses on the AAPI-2 [Adult-Adolescent Parenting Inventory] suggest that he may lack knowledge or currently hold problematic beliefs (sic) about his child’s developmental abilities, emotional needs, appropriate parent-child roles and his child’s power and independence.”
- Ms. Bailey noted that R.P. responded “Uncertain” to nine of the forty questions on the AAPI-2 test which, she said, “indicates that a lack of knowledge about parenting practices, child development and parent-child attachment may be contributing to his present profile.”

- Relying on standardized testing and her interview with R.P., Ms. Bailey assessed R.P.'s adaptive behaviour which is "an individual's ability to independently meet the needs and social demands of the environment". That includes communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure and health and safety. She concluded that R.P. is having difficulty in many areas of adaptive functioning. At present he often relies on his mother, his grand-father and income assistance to assist in the completion of everyday tasks. Everyday communication might be difficult for him and he may have trouble answering complex questions that require careful thought and opinions. His interview demonstrated that he has difficulty caring for himself independently and meeting his everyday needs as evidenced by his reliance on others, the fact that he has never been able to live on his own, his inability to obtain and maintain employment and difficulty with financial management. Although he receives Income Assistance and lives at home he is unable to manage his money. Ms. Bailey said that he could not report on how much debt he owes as "collection agencies have stopped calling him". Further, aspects of basic reading, writing, math and other academic skills needed for daily, independent functioning, including measuring length and height, giving clerks the necessary amount of money when buying items, budgeting money to cover expenses and researching reliable information on the internet may be difficult for R.P. and he may experience some challenges understanding social consequences of his actions and making good social relationship choices.
- Tests suggested that he has experienced a past major depressive episode and has experienced symptoms of depression. He also met the criteria for Cannabis Use Disorder, Moderate, and is probably suffering from social anxiety disorder. He also likely met the criteria for post-traumatic stress disorder (he reported being sexually abused while in foster care). On page 36 of her report Ms. Bailey said "It will be very important for [R.P.] to receive mental health treatment, particularly for his PTSD and Social Anxiety, if he is to be in a parenting role with his children."

- In summary Ms. Bailey said at page 37 of her report:

“Overall, [R.P.] presented as a vulnerable young man in need of support. He has experienced a lot of trauma and instability in his life that has made it difficult for him to trust other people. He has also experienced depression, social anxiety and PTSD for which he has likely never received adequate treatment. Additionally, [R.P.] has many cognitive challenges that have made learning difficult. [R.P.] reported that he is receiving benefit from the counsellor he has been seeing and recognizes that it is important for him to talk about things that have happened to him in the past. Regarding [N.R.], [R.P.] has little insight into why [N.R.] was taken into care and but appears (sic) willing to engage in services to learn more about parenting in order to gain more access to [N.R.]”

[22] Ms. Bailey had a number of recommendations including:

1. That R.P.’s mental health problems should be treated and regularly monitored;
2. That R.P. may require formalized services in order to maintain his abstinence from cannabis; and
3. That R.P. could benefit from working with a Family Support Worker to learn more about child development and basic parenting skills.

[23] Ms. Bailey opined that R.P. benefited from hearing information multiple times in order to retain that information but still benefited from prompts to help his memory. She also said that based on his responses, he lacked knowledge of basic parenting principles. Regarding his cognitive functioning in the future, she said that she did not expect any significant changes to his cognitive profile in the years to come.

[24] Ms. Abby Miller, a family support worker employed by the Department of Community Services also gave evidence. Ms. Miller was referred to R.P. and D.R. in April 2016. She described her job as helping families alleviate child welfare concerns.

[25] When Ms. Miller was assigned to the Respondents, her role was to provide parenting education and support for both of the Respondents, to help them understand a child’s emotional needs including attachment, various developmental stages that a child goes through and a child’s medical needs as well as hygiene, safety, structure and nutrition. Part of her job was also to assist the Respondents in

knowing where to access community resources such as where to find safe and adequate housing, where to find food, etc.

[26] Ms. Miller testified that she stayed in touch with the long-term social worker and case aids and generally met with the Respondents on a weekly basis. Approximately half of those visits were at their home and the other half was during their access sessions with N.R.. Of all the witnesses that testified on behalf of the Agency, she, perhaps, had the most hands-on involvement with R.P..

[27] Ms. Miller said that initially D.R. was more engaging with N.R. than was R.P.. He became engaged usually only with D.R.'s prompting or the encouragement of Ms. Miller.

[28] Ms. Miller gave R.P. instructions on how to interact with N.R. including making eye contact, cuddling, talking to him and playing simple games with him. While R.P. tried to follow her direction, he was inconsistent in doing so and needed to be frequently prompted.

[29] When the Respondents separated in October 2016 Ms. Miller began meeting with them separately. Ms. Miller provided R.P. with material on a child's stages of development and safety concerns (e.g. choking). She frequently and repetitively showed him how to interact with N.R. and he seemed to need that constant direction.

[30] Ms. Miller expressed concern that R.P. did not tell N.R. that he loved him and she found it notable that R.P. rarely showed his son affection and she could identify only one occasion when she saw him kiss N.R.. She said that R.P. would hold N.R. but he would not snuggle him.

[31] Ms. Miller said that normally after spending as much time with a client as she had with R.P., she would close her file. However in R.P.'s case she felt he needed ongoing assistance.

[32] One example of childcare that R.P. struggled with was changing N.R.'s diaper. Ms. Miller said that she showed R.P. on a number of occasions how to change N.R.'s diaper and in the course of doing so how to distract N.R. so that he would be less likely to squirm away. As of the date of trial, R.P. was capable of changing N.R.'s diaper but apparently still needed to be reminded of the proper method of cleaning N.R. before fitting him with a new diaper and it was still a concern how long it took him to get the job done.

[33] As of the date of trial Ms. Miller said she still had not been able to cover issues such as hygiene and child safety with R.P. because it took so long to cover each topic with him.

[34] Ms. Miller said that R.P. did not have a grasp “at all” on what N.R. eats and what he can eat. She said R.P. seemed to show no interest in learning such things even though she tried on numerous occasions to teach him. She also did not have time to cover budgeting with R.P.. She said she had been focussed on basic parenting skills with R.P. and was unable to go on to other topics.

[35] It was Ms. Miller who directed R.P. to the Nobody’s Perfect parenting class.

[36] Ms. Rea Shaw gave evidence as an expert in the field of counselling, in particular in developing coping skills in relation to anger, mental health and high stress situations.

[37] Ms. Shaw is a therapist in private practice. According to her Curriculum Vitae she provides therapy to individuals, couples and families and her services include relationships, parenting, separation and divorce, depression, anxiety, stress, violence, anger, grief and addictions.

[38] In her report to the Court she said that the purpose of her involvement with R.P. was to “assist him in managing his anger, gaining insight into his mental health concerns, building supports in his life and increasing his coping skills related to parenting in a high-stress situations (sic), and exploring his feelings towards his ex-partner.”

[39] Ms. Shaw said that R.P. acknowledged having anger issues and together they explored situations that would cause him to become angry and looked at ways that he could cope with that anger and keep it under control.

[40] Activities that calmed him included his art, his video games and spending time with his cat.

[41] She said that in the past he had thoughts of suicide and had gone to the emergency department because of panic attacks.

[42] In her report she offered no opinion but did say that R.P. “has had the opportunity to explore ways to cope with his feelings about the past, and to develop practical skills to assist him get his angry feelings under control.” She also said that R.P. told her that he found their time together “very helpful”, and he was

coping better with his anger and that he has had no angry outbursts. He reported feeling happier and healthier than he had in the past and that his mental health is much better at the moment and that he had not experienced any anxiety or panic attacks.

[43] During her cross-examination Ms. Shaw described her sessions with R.P. as a “work in progress” and that he attended all but one of their sessions and the one that he missed was rescheduled. He talked about N.R. at every session. He also said that he would not live alone. He identified his mother as his biggest support.

[44] Ms. Sonya Murphy, a case aid with the Department of Community Services, Child Welfare Division, also gave evidence. It was her job to observe the Respondent’s access with N.R. and during such access to maintain a safe environment for the family.

[45] Ms. Murphy was first assigned to the Respondents’ file in February 2016. Initially she observed the Respondents’ together during their access with N.R.. After their separation she observed their access sessions separately but “back to back”.

[46] It was Ms. Murphy’s evidence that R.P. could, at times, have been more attentive to N.R. – in one case she had to intervene to keep N.R. from spilling a cup of coffee on himself. She also said that R.P. frequently needed to be prompted as he could not pick up on N.R.’s cues when the child was thirsty, hungry or tired. Once told what to do, R.P. did it.

[47] Ms. Murphy said that she would not be comfortable recommending that R.P. have unsupervised access.

[48] Ms. Sula Wright was another case aid with the Department of Community Services who observed the Respondents with N.R. during their access. She had been assigned to the Respondents approximately a year prior to the trial.

[49] Initially the Respondents exercised their access together. Ms. Wright said that during that time D.R. took the lead in interacting with N.R.. It was D.R. more so than R.P. who held and fed N.R.. D.R., however, would tell R.P. when it was his turn to interact with their son.

[50] Since the Respondents separated, she continued to observe both Respondents separately. She said that R.P. required prompting. Specifically he had

to be reminded when N.R. needed a diaper change or when he should be given a snack or a bottle.

[51] She too noted that R.P. struggled with changing N.R.'s diaper.

[52] During cross-examination she acknowledged that R.P.'s attendance at his access sessions was good and that she had no serious concerns although she felt that she had to be close to R.P. and N.R. at all times.

[53] Maureen Sullivan is an access facilitator with the Department of Community Services and has been in that position for approximately 21 years.

[54] She too said that when the Respondents were together it was usually D.R. who spent most of the time caring for N.R.. R.P. would feed N.R. with direction.

[55] It was also her evidence that R.P., after the parties separated, required prompting and instruction as to when, what and how to feed N.R. and that he only started changing N.R.'s diaper in the two or three months prior to the trial. When directed, he would do as Ms. Sullivan advised.

[56] She said that R.P. often needed prompting to speak to N.R. and encouragement to read to N.R..

[57] His attendance at his access sessions when Ms. Sullivan was supervising was also good. She said he was eager to see N.R.. When she felt the need to provide him with some direction he followed it. The need for directions seemed to be an ongoing requirement.

[58] Ms. Kirsty Seddon is a Long-Term Social Worker with the Dartmouth District Office of the Department of Community Services. As of the date of the trial she was primarily responsible for the file in relation to the Respondents and N.R..

[59] She described N.R. as a happy, healthy child. He turned 15 months old during the course of the trial. He at that time was walking. She gave evidence regarding the history of the proceedings involving the Respondents, the services provided by the Agency and other services in which the Respondents engaged.

[60] During her involvement with the Respondents she had occasion to observe R.P. when exercising access with N.R.. She said that R.P. loves N.R. but she found that he did not talk very much to his son and did little to verbally stimulate N.R..

She said that she encouraged R.P. to face N.R., to talk to him and to encourage N.R. to talk back to him by repeating certain words. She also spoke to R.P. about showing N.R. affection. She said R.P. was reluctant to kiss N.R. because of his concern over the exchange of germs.

[61] She said that when she spoke with R.P. about his long-term plan, he told her that he would like to have his own place someday but he didn't see how that would happen or how he could afford his own residence.

[62] Ms. Seddon attended at R.P.'s home (the home of his parents) and said that she had no concerns with the home.

[63] It was her evidence that the Agency did not support R.P.'s plan for the care of N.R.. She also did not support his mother's plan as an alternative caregiver. With reference to R.P.'s mother, L.P., she gave evidence of how four of L.P.'s sons were placed in the permanent care and custody of the Agency because of neglect including neglect of the children's medical needs, inadequate supervision and insufficient stimulation among other reasons. She also felt that L.P. still did not acknowledge or fully appreciate all of the reasons her children were placed in permanent care.

[64] She gave evidence of the police involvement with R.P. and his family and R.P.'s charge of assault on his father in 2011.

[65] Prior to R.P. meeting with Ms. Bailey for his psychological assessment, Ms. Seddon met with R.P. to review the questionnaire that Ms. Bailey asked him to complete. Ms. Seddon had to help him fill out the answers to the questionnaire. After reading the questions to him and receiving his answers she wrote out the answers and read them back to him to be sure that the answers reflected what he wanted to say.

[66] In addition to the oral testimony and affidavits of the aforementioned witnesses, a number of exhibits were tendered by the Agency including all of the pleadings and supporting affidavits presented prior to each Court appearance, the Agency case recordings, the access facilitator reports, records from the Halifax Regional Police Department regarding R.P. and his father, the C.V.'s and reports of Ms. Bailey and Ms. Shaw, the Parental Capacity Assessments related to R.P.'s parents prepared by Dr. Lowell Blood dated February 1, 1999 and November 9, 2001, the decision of Justice Williams leading to his order for permanent care of R.P. and his three brothers and the decision of the Nova Scotia Court of Appeal

dated January 3, 2003 upholding the decision of Justice Williams. I have considered all of those exhibits.

[67] In response to the Agency's case, R.P., two of his brothers and his mother gave evidence.

[68] R.P.'s parents had five sons. The first of L.P.'s children was born when she was in her mid-teens. R.P. was born when she was approximately 18 years of age. H.W. was born when she was 20, J.S. was born when she was 22 and her youngest child was born when she was 26.

[69] R.P. and his siblings were the subject of two proceedings under the *Act*. According to the decision of Justice Williams dated July 4, 2002 the first was commenced in September 1998 and by agreement between the Agency and R.P.'s parents was terminated in January 2000. Concerns at that time included parental neglect including neglect of the children's medical needs, extremely poor hygiene, poor living conditions, possible physical abuse of one of the children and R.D.P.'s anger and how it could spill over into violence directed toward the children and/or L.P..

[70] A second proceeding was initiated in May 2001, just over a year after the termination of the previous proceeding. At that time the concerns were similar and included the children's very poor hygiene, the frequent absences of some of the children from school, the condition of their home, neglect including failure to properly supervise the children, failure to properly protect the children from hazards in the home and neglect of their physical and emotional needs. After five days of trial Justice Williams ordered four of the five children to be placed in the permanent care and custody of the Agency. The oldest child was not a subject of that proceeding. He had been living for many years with his maternal grandparents and continued living with them.

[71] As the children grew older, R.P. and two of his siblings, J.S. and H.W., returned to the home of their biological parents. At the time of this trial, R.P., J.S. and H.W. continued to live with their parents, as did their two pet dogs and pet cat.

[72] H.W. (age 25) provided the Court with his affidavit. According to his evidence he receives Income Assistance out of which he pays his mother room and board. He said he is not able to work because he has episodes of vertigo. He said "This makes it hard for me to travel, so I am at home most of the time."

[73] In his affidavit he said that he was placed in the same foster home as was R.P.. He said his foster family was not a very good foster family. He was happy to be home (with his biological parents).

[74] He said he would try his “very hardest” to help his brother raise N.R..

[75] On cross-examination he acknowledged that he and his brothers stay home much of the time.

[76] H.W. never spent time with or for that matter ever met N.R..

[77] J.S. (age 23) also provided an affidavit. In it he said he has a three-year-old daughter and that he cared for her when she was a baby so he believed that he would be able to “guide” his brother in taking care of N.R..

[78] According to his affidavit his daughter lives with her mother in Chester Basin, Nova Scotia and he had not seen his daughter for approximately nine or ten months.

[79] After J.S. was placed in the permanent care and custody of the Agency at the age of seven, he was adopted when he was “about 9 years old” along with his younger sibling. At the age of 17 he returned to the home of his biological parents. He too receives Income Assistance. He said “I am at home three-quarters of my time, so I would be able to keep an eye on [N.R.] if [R.P.] has an appointment or something else he has to do.”

[80] During his cross-examination he said that he was not employed outside of the home. For fun he plays video games with his brothers and his father. He said he stays home “a lot”.

[81] J.S. said that he was close to his mother and his father as well as his two brothers.

[82] Like his brother H.W., J.S. has not cared for or seen N.R.

[83] R.P.’s mother, L.P. provided an affidavit. She is 45 years old. Her husband is R.D.P.. They were married in the summer of 2000, approximately 17 years ago. They have been in a relationship of one sort or another since they were in junior high school and, as said earlier, began to have children together in their mid-teens.

[84] They live in a four bedroom duplex along with their three sons. R.P. has his own room which he would share with N.R. if N.R. was placed with him.

[85] She fully supported R.P.'s plan for N.R.. She said in her affidavit that she is willing to help R.P. in any way necessary and has offered herself as an alternative placement for N.R.. The first the Agency heard of her wish to be considered as an alternative placement came with the arrival of her affidavit, approximately two weeks before the first day of trial. She had been aware of the protection proceedings since they were initiated immediately after N.R.'s birth.

[86] L.P. has a full-time position with a local cable company where she had been employed for approximately nine months. She is required to work five days a week. She said she does not work Sundays and is off one other day during the week. She said that she leaves the home at approximately 6:00 a.m. each workday to catch a bus to work and is usually home between 4:30 and 5:00 p.m.. She also said that she continues to work part-time at a local inn where she works two or three shifts per month doing housekeeping.

[87] She recently applied to her employer for permission to work at home. By the conclusion of the trial, that application had not been approved. If accepted, she would have to set-up a home office in the basement of their home. She would not be available to care for N.R. on a full-time basis but would be available for at least short periods of time if and when the need arose.

[88] During her cross-examination she said that if she worked at home her hours would be more flexible so long as she put in the required number of hours and finished work no later than 8:00 p.m. each night. She also pointed out that her father and her sister live near their home if assistance was needed.

[89] She said each of her three sons pay her \$250.00 a month "for their room and board". With her employment income and the rent from her sons she is able to manage the household finances. She also said:

"It is my understand that [R.P.] would receive additional funding for having [N.R.] in his care, including the Canada Child Benefits (sic). I am confident that as a family, we are able to meet [N.R.]'s financial needs."

[90] If she was granted custody of N.R. she said it was her understanding that she could get parental leave during which she would receive Employment Insurance benefits. She said she has already looked into daycare arrangements in her

neighborhood although nothing definite has yet been arranged. She said that if she was working she would take N.R. to daycare and if she could not pick him up herself after work she would arrange for someone else to pick him up for her.

[91] She said that she would also be involved with going to N.R.'s medical and other appointments with R.P..

[92] As for her own history in child protection matters, she said at paragraph 26 of her affidavit:

“The reason that all happened was because of neglect and also the medical needs of my children, which we struggled with. There was no physical abuse of any kind. Our home was a mess, there is no denying that we lacked in that area. My boys were delayed in some areas, and they also had medical issues that were not caused by neglect. We had them into Nova Scotia Hearing and Speech, and also Atlantic Child Guidance, to get some help.”

[93] She went on to say that she accepts responsibility for R.P. losing several of his teeth when he was a baby (he now has no teeth at all). She attributes that to leaving him “on the bottle too long” and for letting him fall asleep with his bottle in his mouth.

[94] She also said that she accepted responsibility for R.P.'s speech delay. She said that he did not want to talk and he would just point and she would retrieve for him whatever it was that he wanted.

[95] As for her current circumstances, she said that it has been fifteen years since their last involvement with the Agency and “a lot has changed since then”. She said that she and her husband have learned from their mistakes which were made when they were much younger. She said:

“We have grown and matured, and our life is very different now. I have regular employment and our home is always clean. I hate a messy house.”

[96] While L.P. said she had confidence in R.P.'s ability to parent N.R. without her help, she was prepared to offer her help if needed. That help would include assuming custody of N.R. if the Court was not willing to place N.R. with R.P.. L.P. had not made an application to the Court for custody but said that she did talk to a lawyer.

[97] The only information the Court had concerning R.P.'s father came from the other witnesses and other collateral information supplied by the parties. R.D.P. is 45 years of age and does not work outside of the home. Most everyone seemed to agree that he suffered from severe social anxiety, the symptoms of which first appeared soon after the birth of his first child and got worse after that. I was told that he rarely leaves the home other than to see his family doctor. He may suffer from agoraphobia but I was not told that he has been formally diagnosed. L.P. told me that while her husband supported R.P.'s position regarding N.R., he could not bring himself to give evidence or attend Court. L.P. said that he doesn't like crowds.

[98] R.P. provided his own affidavit and gave oral testimony.

[99] R.P. is 27 years of age. He confirmed that he lived with his parents and his two younger brothers.

[100] Although he was not employed outside of the home and hasn't been for some time, he has held different jobs in the past including a position as a cook at the same inn where his mother works part-time, as well as other jobs "doing concrete and landscaping, and snow removal".

[101] His only income is Income Assistance.

[102] While in foster care he became separated from two of his younger brothers. His time in foster care was not a happy experience; he was sexually assaulted. Eventually he returned to live with his biological parents.

[103] Part of R.P.'s motivation for seeking custody of N.R. is that he does not want his son to have the same childhood that he had.

[104] He has his high school diploma although he was on an Individualized Program Plan for almost all subjects. He acknowledged having learning disabilities in some subjects such as math and reading and having a speech delay. He said too that as a child he had social delays and was very shy.

[105] R.P. is not currently in a relationship with anyone.

[106] Before N.R. was born R.P. and D.R. shared an apartment in Dartmouth. They moved in with R.P.'s parents a few weeks after N.R. was born (and after he was taken into care).

[107] R.P. was upset when N.R. was taken into care however, he enjoyed his visits with N.R. and said he learned a lot about looking after a baby during the course of these proceedings.

[108] He confirmed that his mother was allowed to come to his access sessions once per month on days she chose based on her work schedule. R.P. said that his mother helped him learn more about looking after a baby.

[109] After he and D.R. separated, D.R. moved out of his parents' home and their access visits were separated. His access had been taking place at the Agency's offices but shortly before the hearing was moved to the community – usually the library in Dartmouth, Nova Scotia.

[110] He described his visits with N.R. and it is apparent that he enjoys spending time with his son.

[111] He described briefly his sessions with the family skills worker, Ms. Miller, who worked with him to help him learn how to take care of N.R..

[112] He said that he found his counselling sessions with Ms. Rae Shaw to be very helpful. He enjoyed seeing her. She helped him "learn ways to relax and stay calm" and he said he does not get angry as easily anymore.

[113] In addition to the services offered by the Agency and attending the Nobody's Perfect Program he said he read some books to help him learn more about parenting as well as material that he received at the Nobody's Perfect Program.

[114] His plan for N.R. was to live in the home of his parents along with his brothers. N.R. would sleep in the same bedroom as R.P. until he is old enough to need his own bedroom. R.P. said he would be able to get a crib for N.R. with help from Income Assistance.

[115] He said he intends to be at home with N.R. everyday but he would also like to put N.R. in preschool to be with other children his age.

[116] If N.R. is placed in his care he would take N.R. to his family doctor.

[117] In addition to Income Assistance it was his plan to apply for the Canada Child Benefit so that he would "have enough money to buy [N.R.] diapers, clothes, toys and everything else he needs."

[118] He also confirmed that if the Court was not prepared to place N.R. in his care he was willing to agree to his mother, L.P., having custody of N.R. instead of him.

[119] During his oral testimony he said that he and his family got along well although he acknowledged they had problems in the past. Those problems included incidents of verbal arguments and on at least one occasion, in 2011, included threats as well as physical violence between R.P. and his father which resulted in R.P. being charged criminally and subsequently convicted and placed on probation.

Applicable Legislation

[120] This is a proceeding under the *Act*. There were extensive amendments to the *Act* that came into effect on March 1, 2017. Those amendments, contained in S.N.S. 2015, c. 37, do not apply to this case by virtue of section 75 which reads as follows:

“Any proceeding commenced pursuant to the Children and Family Services Act before the day on which this *Act* came into force and not finally disposed of before that day shall be dealt with and disposed of in accordance with the Children and Family Services Act as it read immediately before that day, as though this *Act* had not come into force.”

[121] Section 2 of the *Act* says the purpose of the legislation is to protect children from harm, promote the integrity of the family and assure the best interests of children. Further, in all proceedings and matters pursuant to the *Act*, the paramount consideration is the best interests of the child involved.

[122] The preambles of the *Act* must be considered when interpreting the operative provisions of the statute. The *Act* places significant importance on the family unit in society. As important as the family unit is, it is recognized that children are entitled to protection from abuse and neglect and if a child is being abused or neglected or there is a substantial or real risk that a child will suffer harm, the state is required to intervene. Nevertheless, children and their families have the right to “the least invasion of privacy and interference with freedom that is compatible with their own interests and of society’s interest in protecting children from abuse and neglect”. Further, the recitals emphasize that proceedings under the Act must respect a child’s sense of time which is different from that of adults.

[123] N.R. was taken into care immediately after his birth. He was not abused or neglected by his parents but rather the Agency took action because of its belief that there was a substantial risk or a real chance of danger or harm to N.R. as described in sub-section 22(2). I subsequently agreed and for that reason granted the Protection Order (with the consent of the Respondents) on May 9, 2016.

[124] The Agency now seeks an order for permanent care and custody of N.R..

[125] The burden of proof in child protection cases rests with the Agency who asserts the need for protection. The standard of proof is the standard in civil cases, that is to say, the balance of probabilities. The weight of the evidence must show that it is more probable than not that the assertion made by the Agency is correct.

[126] If I conclude that N.R. is no longer in need of protective services as described in section 22(2) of the *Act*, then I must dismiss the Agency's motion and return N.R. to his parents.

[127] In the Agency's Protection Application sub-sections 22(2) (b), (g) and (ja) were pleaded. They read as follows:

22 (1) In this Section, "substantial risk" means a real chance of danger that is apparent on the evidence.

(2) A child is in need of protective services where

...

(b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

[Clause (a) reads:

(a) the child has suffered physical harm, inflicted by a parent or guardian of the child or caused by the failure of a parent or guardian to supervise and protect the child adequately;]

...

(g) there is substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

[Clause (f) reads:

(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent or guardian does not provide, or refuses or is unavailable or

unable to consent to, services or treatment to remedy or alleviate the harm;]

...

(j.a) there is substantial risk that the child will suffer physical harm inflicted or caused as describes in clause (j);

[Clause (j) reads:

(j) the child has suffered physical harm caused by chronic and serious neglect by a parent or guardian of the child, and the parent or guardian does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;]

The Agency is not prevented from making a case under the other sub-sections of paragraph 22(2) but from my review of the facts and the evidence the other sub-sections do not apply.

[128] Should I conclude that N.R. is still in need of protective services then I must determine what the appropriate disposition should be. My options are listed in section 42(1) which says:

42(1) At the conclusion of the disposition hearing, the court shall make one of the following orders, in the child's best interests:

- (a) dismiss the matter;
- (b) the child shall remain in or be returned to the care and custody of a parent or guardian, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
- (c) the child shall remain in or be placed in the care and custody of a person other than a parent or guardian, with the consent of that other person, subject to the supervision of the agency, for a specified period, in accordance with Section 43;
- (d) the child shall be placed in the temporary care and custody of the agency for a specified period, in accordance with Sections 44 and 45;
- (e) the child shall be placed in the temporary care and custody of the agency pursuant to clause (d) for a specified period and then be returned to a parent or guardian or other person pursuant to clauses (b) or (c) for a specified period, in accordance with Sections 43 to 45;
- (f) the child shall be placed in the permanent care and custody of the agency, in accordance with Section 47.

[129] Subsection 42(2) provides that I am not to make an order removing N.R. from the care of his parents unless I am satisfied that less intrusive alternatives, including services to promote the integrity of the family pursuant to section 13, have been attempted and have failed, have been refused by the parents or would be inadequate to protect N.R..

[130] Subsection 42(3) provides that, should I decide that it is necessary to remove N.R. from the care of his parents (or keep him from the care of his parents) then, before making a further order for temporary care or an order for permanent care and custody, I am to consider whether it is possible to place him with a relative, neighbour or other family member in his community or extended family.

[131] Further, subsection 42(4) says that I am not to make an order for permanent care and custody unless I am satisfied that the circumstances justifying the order for permanent care are unlikely to change within a reasonably foreseeable time which time cannot exceed the maximum time limits under the *Act* which in this case is July 21, 2017 – less than a month from now. Subsection 45(1)(a) of the *Act* provides:

45(1)Where the court has made an order for temporary care and custody, the total period of duration of all disposition orders, including any supervision orders, shall not exceed

(a) where the child was under six years of age at the time of the application commencing the proceedings, twelve months;

[132] The first Disposition Order, a Temporary Care and Custody Order, was granted on July 21, 2016. The “outside date” in this matter is therefore July 21, 2017.

[133] Whatever disposition order I make pursuant to section 42, I am required to take into account N.R.’s best interests which in turn requires a consideration of the circumstances listed in subsection 3(2) of the *Act* which says:

Where a person is directed pursuant to this Act, except in respect of a proposed adoption, to make an order or determination in the best interests of a child, the person shall consider those of the following circumstances that are relevant:

- (a) the importance for the child’s development of a positive relationship with a parent or guardian and a secure place as a member of a family;
- (b) the child’s relationships with relatives;

- (c) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (d) the bonding that exists between the child and the child's parent or guardian;
- (e) the child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs;
- (f) the child's physical, mental and emotional level of development;
- (g) the child's cultural, racial and linguistic heritage;
- (h) the religious faith, if any, in which the child is being raised;
- (i) the merits of a plan for the child's care proposed by an agency, including a proposal that the child be placed for adoption, compared with the merits of the child remaining with or returning to a parent or guardian;
- (j) the child's views and wishes, if they can be reasonably ascertained;
- (k) the effect on the child of delay in the disposition of the case;
- (l) the risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent or guardian;
- (m) the degree of risk, if any, that justified the finding that the child is in need of protective services;
- (n) any other relevant circumstances.

[134] Of the circumstances listed in subsection 3(2) I find the circumstances described in clauses (e), (i) and (l) to be particularly applicable in this case although I have considered the other circumstances listed.

Analysis

[135] Having considered all of the evidence, I have concluded the Agency has met its burden and I feel compelled to place N.R. in the permanent care and custody of the Agency. I do this knowing full well that an order for permanent care and custody is the most intrusive of all of the options given to the Court under section 42.

[136] Of all the possible disposition orders I can make, I have come to the conclusion that only an order for permanent care and custody would be in N.R.'s best interests.

[137] I have considered the importance of N.R.'s relationship with his parents and extended family members. I have considered the possible effects on N.R. resulting from keeping him separated from his parents and family members.

[138] I have considered his current physical, mental and emotional level of development as well as his physical, mental and emotional needs and the appropriate care that he will require to meet those needs.

[139] I have considered the risk that he may suffer harm from being kept away from his parents and extended family members and I have also considered the possible harm that may come to him if he was to be placed with either or both of his parents or extended family members.

[140] I have concluded that if N.R. was placed in the care of his father, there is a substantial risk that he will suffer harm – not because of any intention on the part of R.P. to cause him harm, but because R.P. will be unable to adequately supervise and protect N.R. on a daily basis. Similarly, I believe that by placing N.R. in the care of R.P. there is a substantial risk that N.R. will suffer emotional harm as described in subsection 22(2)(f) because of his father's inability to alleviate that harm. Further, by placing N.R. with R.P. I believe that there is a substantial risk that N.R. will suffer physical harm caused by chronic and serious neglect as described in subsection 22(2)(j) because of his father's inability to safeguard him from that harm.

[141] I also believe that there is a very substantial risk that if N.R. is placed in his father's care, N.R. will not receive the required care, stimulation and education that is necessary for him to develop to his potential – again, not because of any intent on the part of his father, but rather because of his father's inability to provide him with the level of care and stimulation that he requires.

[142] R.P., his mother L.P. and his brothers J.S. and H.W. all seem to be very pleasant, well intentioned people. They all seemed genuine in their desire to have N.R. placed with R.P. or at least with the family. I do not doubt that L.P., J.S. and H.W. would try to take care of N.R. but sadly it is probable that their efforts are not going to be good enough to protect N.R. from harm.

[143] In 2002 Justice Williams ordered that R.P. and his younger brothers, then ranging in age from 12 to 4 years, be placed in the permanent care and custody of the Agency.

[144] According to Justice Williams's decision, in 1998 J.S., who was then four years of age, was found by the police more than half a mile from his home. When he was returned home his parents were asleep, apparently unaware that he had left the house. H.S. at approximately the same time made an accusation against his father to the effect that his father had hit him.

[145] When Agency workers attended at R.P.'s home, they found it not suitable for the raising of children because of disarray, filth and smell.

[146] The children's clothing was not clean. There was evidence that their medical needs were not being met. Clearly they were not being properly supervised. A protection proceeding was initiated. Among other things a Parental Capacity Assessment was performed by Dr. Lowell Blood resulting in his report dated February 1, 1999.

[147] In his report Dr. Blood stated that L.P. and R.D.P. had difficulties in providing for some of the basic needs of their children including providing for their hygiene and cleanliness in the home.

[148] He noted that there were concerns regarding the adequacy of cognitive stimulation provided to the children. He described the three older boys (R.P. being the oldest) as being developmentally delayed. Speech was noted as a particular concern for three of the children including R.P.. He noted too that the boys' oldest brother, who lived with his maternal grand-parents, did not appear to have the same speech difficulties which, he said, suggested "a strong environmental component to their speech difficulties ...".

[149] Dr. Blood's report also referred to some physical aggression by R.P.'s father towards his mother.

[150] Dr. Blood conducted a psychological assessment of R.P.'s mother, L.P., and said that her test scores placed her in the "Borderline Range of intellectual functioning" and his father's test results placed him in the "Average Range of intellectual functioning".

[151] Under the heading of "Formulation" Dr. Blood said:

"Until recently, it appears that this couple [R.P.'s parents], with the support of extended family, has managed to provide care for their children, which has been marginally adequate."

[152] And further:

“There is clear evidence that some of the problems experienced by the children are environmentally based. The best example of this is the significant language problem seen in [R.P.], [H.W.] and [J.S.]. This is in contrast to the relatively stronger language skills in evidence with [their oldest brother], who is [L.P.’s] and [R.D.P.’s] biological child, but who has grown up in the maternal grandparents’ home. As [L.P.] and [R.D.P.] both struggle with language skills themselves, theirs is not a home in which language stimulation, or cognitive stimulation in general, would come naturally. The children have apparently had few contacts outside the family, until the time they entered school. While they may be predisposed to having such difficulties with speech and language, the poverty of stimulation in the home would exacerbate any such pre-disposition. A second example is the degree of aggressiveness noted in the boys. Again, it is noteworthy that this aggressiveness seems to occur only in the home, where it is tolerated. None of the boys are described as being behavioral problems outside of the home.”

[153] With respect to R.P.’s father, he said:

“[R.D.P.’s] role in this family remains as the greatest concern. He is a very passive man, who houses a considerable amount of anger. This combination is worrisome. Although [L.P.], [R.P.] and their oldest son...all deny that [R.D.P.] hit [H.W.], his recent assault of [L.P.] demonstrated his capability for physical violence. He appears to use his anxiety disorder to excuse his lack of initiative and seeming apathy. However, there is not a sense that [R.D.P.] is doing any work to alleviate this condition, other than take the medication prescribed by his physician, with whom he would not allow contact. What is clear is that [R.D.P.] needs to be engaged in a process of meeting his son’s needs in an appropriate manner.”

[154] Dr. Blood made a number of recommendations including that the Agency continue to provide family support services to the family, that R.P.’s parents be provided with instructions with regard to providing appropriate language and cognitive stimulation for their youngest son, that R.P. be referred for mental health consultation and that the youngest son be referred for speech and language assessment.

[155] It is noteworthy that R.P.’s father was charged with assault on his mother which charges were still outstanding at the time of the first child protection proceeding.

[156] The first child protection proceeding was terminated in January 2000 following the Agency's plan which stated that R.P.'s parents were expected to maintain a clean and safe residence for the children, ensure that they attended all their medical appointments, that they place basic financial needs ahead of recreational spending and that they maintain close contact with the children's school.

[157] Just a year later the second child protection proceeding was initiated following a referral from H.W.'s school.

[158] A resource teacher at the children's school said that R.P. smelled so bad one could barely be around him and that he and his siblings were often unclean and smelled. They were also frequently absent from school.

[159] In May of the same year a referral was received by the Agency from a constable with the Halifax Regional Police Department in which he said that while responding to a domestic situation at the home of R.P.'s parents, he found the house to be in "total disarray".

[160] A subsequent visit to the home by Agency workers found the home to be in a deplorable state which is described in detail by Justice Williams in his decision and which he summarized as "gross".

[161] Eventually there was a trial to determine whether the children should be placed in permanent care. Among the evidence received was a further report from Dr. Blood, dated November 9, 2001.

[162] Justice Williams quoted from Dr. Blood's report, in particular the following from pages 25 and 26 of Dr. Blood's report:

"[R.P.], [H.W.], [J.S.] and [the youngest son] are boys with multiple difficulties. All four are developmentally delayed, with speech and language being an area of particular concern for each boy. In addition, [R.P.] has kidney problems and demonstrates aggressive behaviour; [H.W.] has vertigo, bowel difficulties and exhibits sexualized behaviour; and [J.S.] has vertigo and problems with vision. **It is apparent that these difficulties have been exacerbated by chronic, long-term, physical and emotional neglect.** Results from the present assessment suggest a deterioration in the care received by these children in the period between the assessment completed in February of 1999 and their apprehension in May of 2001. **It appears that their nutritional needs were not being met; that their medical needs were not properly attended to; that they were not receiving cognitive stimulation in their home and that attendance at school**

was inconsistent. Personal hygiene for the boys and cleanliness in the home was a serious concern. The boys appear to have been socially isolated and to have not had emotional needs met by their parents. It appears that they may have been exposed to violence in the home and possibly to unknown inappropriate sexual experiences. It is telling that both schools attended by the three older boys since the previous assessment felt it necessary to become involved in ensuring their basic needs were met. **Once the boys came into care, a dramatic positive change, described by one teacher as “miraculous” was noted.**

The care of four children would be a challenge to most parents and these are four children with numerous special needs. **Sadly, it appears that their parents, [L.P.] and [R.D.P.], are simply unable to provide even marginally acceptable care for any sustained period. This inability appears related to a number of factors, including intellectual limitation, unaddressed mental health concerns, poor judgement and a resistance to change.** During the year that the Agency was previously involved with this family, there were only brief periods when serious concerns were not in evidence. **[L.P.] and [R.D.P.] appear unable or unwilling to accept responsibility for the damage that has occurred to the children while in their care, and consequently, have little motivation to alter their stance toward parenting.** Rather, [they] offer excuses. They attempt to minimize and explain away concerns. They are resistant to services. They are deceptive and secretive. They place their own needs above those of their children and the likelihood that they will alter this pattern at this point must be considered extremely slim. **If returned to [their] care, [H.W.], [J.S.] and [the youngest son] will continue to suffer the consequences of serious chronic neglect.”**
(Emphasis added)

[163] Justice Williams concluded that all four of the boys suffered from developmental delays and some had serious medical conditions and that their parents did not provide and could not provide services or treatment to prevent further impairment of the children’s condition. He said that there was a pervasive atmosphere of neglect and that the overall result was that the parents had failed their children.

[164] In this case, Ms. Bailey’s report described R.P. as having, among other things, low cognitive functioning. He has difficulty following directions even when those directions are repeated numerous times.

[165] R.P.’s responses to her questions demonstrated a lack of knowledge about parenting practices, child development and parent-child attachment. He showed signs of social anxiety disorder, P.T.S.D. as well as symptoms of depression.

[166] Further, she said at page 37:

“His difficulties with language, verbal reasoning and memory suggest that when new information is presented to him, he may have difficulty learning about and understanding it. Additionally, his difficulties with functional academics may make it difficult for [him] to independently perform some daily tasks...”.

[167] She said too that he appears to need support in many areas of adaptive functioning including self-direction and independence, social interactions, financial stability, functional academics and communication.

[168] She described him as a vulnerable young man who is in need of support.

[169] Ms. Bailey’s opinion was supported by the evidence of Ms. Miller, Ms. Murphy, Ms. Wright, Ms. Sullivan and Ms. Seddon. Try as he did, R.P. struggled with providing N.R. with even the most basic care without constant instruction and prompting by the family support worker, case aids, social worker and access facilitator. He has little knowledge regarding the care of children and how the needs of children change over time as they pass through their various stages of life.

[170] He showed little emotional attachment to N.R. and generally spoke to him only when prompted to do so.

[171] He did not give N.R. much, if any, emotional, verbal and intellectual stimulation and appears to lack the ability to do so.

[172] To be fair, R.P. himself has a number of delays that impair his ability to provide N.R. with stimulation. During his own childhood he was denied that stimulation.

[173] I have been convinced that if N.R. was to be placed in the care of R.P. his mental and emotional needs, more probable than not, will suffer. It would likely be difficult for R.P. to manage even N.R.’s basic physical needs.

[174] The Agency’s plan for permanent care and custody and subsequent adoption provides N.R. with much better options for the future than would his father’s plan of care. While there are always some risks whenever a child is placed in permanent care and custody, the risk of harm facing N.R. if placed in the care of R.P. is far greater. R.P. does not have the ability, on an ongoing basis, to protect N.R. from harm (physical, mental and emotional). It is more probable than not that N.R. will be as isolated socially as was his father and uncles. With R.P., N.R.’s emotional and psychological development is very likely to be compromised.

[175] R.P. is incapable of caring for himself to the degree that he could be self-reliant. Similarly he's not sought help for his own psychological needs, medical or dental care. There is no reason to believe that he could care for a young child and many reasons to believe he cannot.

[176] I considered the possibility of placing N.R. in the care of his paternal grandmother, L.P..

[177] L.P. gave evidence to the effect that she is older now and has learned from her mistakes. When her children were taken into care she was younger and could not manage four children. With only one infant to care for, she believes she would be up to the task.

[178] Presently L.P. works full-time outside of the home. If that continued she would be of minimal assistance with the care of N.R. during the week. Even if she was granted permission to work from home (which has not yet been confirmed) she would still be required to work and therefore the majority of the care of N.R. would fall to R.P..

[179] I have no reason to believe that the passage of time has made L.P. a better parent. Her three sons who now live with her spend most of their time inside their home. None of them maintain any kind of employment, whether full-time or part-time, outside of the home and none of them show any intention to seek employment. It is claimed that health conditions stand in the way (vertigo) but there is no evidence to support that contention. There is no evidence that they are seeking treatment to remedy any such conditions. None take part in any extracurricular activities or social contacts outside of the home. It is likely that N.R. would suffer the same fate if he was placed in the care of L.P.. His only external stimulation would come from daycare, school and, when he is older, interaction with other children. That evidently was not sufficient for R.P. and his brothers.

[180] It seems to me that if L.P.'s ability to parent has improved since her children were placed in the Permanent Care and Custody of the Agency, the onus is on her to prove it. The Agency should not have to prove again that which was already established.

[181] R.P.'s brothers experienced the same upbringing as did R.P. and based on Dr. Blood's report, suffer from similar delays. While both claim to be willing to

assist R.P. in the care of their nephew, neither has seen N.R. and there is no evidence that they attempted to see N.R..

[182] With respect to R.P.'s father, there is little the Court can say about him since he did not present himself as a witness. Clearly, however, he suffers from a mental disorder for which he has not sought any expert assistance since Dr. Blood's second report in November 2001. He has not interacted with N.R.. His parenting abilities, at least measured by what happened to his own sons, does not enhance R.P.'s or L.P.'s case.

[183] I do not believe that it is in the best interests of N.R. that he be placed in the care of L.P. even with the support of her entire family. To do so would be to place the child at a real risk of harm. There were legitimate reasons for her own children being placed in the permanent care and custody of the Agency and she has not given the Court sufficient reasons to believe that she would be any better a parent now than was the case in 2002.

[184] Finally, D.R. chose not to provide the Court with a plan of care or evidence and did not attend the hearing. Based on the Agency's evidence of D.R.'s circumstances I concluded N.R. would be in need of protective services if placed in D.R.'s care.

Conclusion

[185] For all of the above reasons I order that N.R. be placed in the permanent care and custody of the Agency. I have considered the provisions of section 42 of the *Act*. I am satisfied that alternatives less intrusive than permanent care and custody would not adequately protect N.R..

[186] I've considered subsection 42(3) as well. Other than R.P.'s immediate family members to which I've referred in this decision, no other relative, neighbor or community member has stepped forward to offer themselves as a placement for N.R..

[187] I have also considered subsection 42(4). I am satisfied that the circumstances that have caused me to believe that an order for permanent care and custody is in N.R.'s best interests are unlikely to change within a reasonable foreseeable time and certainly not before July 21, 2017.

[188] Finally, I have also considered section 47. None of the circumstances listed in sub-section 47(2) apply in this case and I do not believe access would be in N.R.'s best interest. There will be no provision for access.

[189] Counsel for the Agency will prepare the appropriate order.

Dellapinna, J.