

FAMILY COURT OF NOVA SCOTIA

Citation: *Nova Scotia (Community Services) v. L.G.*, 2018 NSFC 7

Date: 2018-03-02

Docket: FTCFSA No. 102045

Registry: Truro

Between:

Minister of Community Services

Applicant

v.

L.G.

Respondent

<p>Restriction on Publication: Pursuant to s. 94(1) of the <i>Children and Family Services act</i>, S.N.S. 1190, c.5.</p>
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Judge: The Honourable Associate Chief Judge S. Raymond Morse

Heard January 29, 2018, in Truro, Nova Scotia

Written Decision: March 02, 2018

Counsel: Sarah Lennerton, for the Applicant
Tara Smith, for the Respondent

By the Court:

Introduction

[1] The respondent L.G. is the mother of the child F. G. (DOB November **, 2015). L.G. is a young single parent. She was 22 when her approximately nine month old son, F., was taken into care by the Minister. As of the date of taking into care (August 18, 2016), L.G. was unemployed and receiving EI benefits. She had just recently moved to the Truro area.

[2] The Minister believes that F.'s father is D.S.. D.S. was briefly involved in a relationship with L.G. prior to the birth of the child. D.S. has not had any contact or involvement with the child since the child's birth. In October 2015 D.S. had indicated that he would prefer that the child be adopted. D.S. was not named as a respondent in the proceeding based upon the agency's conclusion that he did not fall within the statutory definition of a parent as of the date of taking into care.

[3] The Minister has applied for an order for permanent care and custody. L.G. opposes the Minister's application. She is requesting that the child be returned to her day-to-day care and the Minister's application be dismissed.

Proceedings

[4] Pursuant to Protection Application and Notice of Hearing dated August 23, 2016, the Minister made application for a finding that the child F. G. was in need of protective services pursuant to subparagraphs (b), (g), and (ja) of section 22 (2) of the *Children and Family Services Act*.

[5] The proceeding was commenced prior to the legislation amending the *Children and Family Services Act*, which became effective on March 1, 2017. In accordance with section 75 of the *Children and Family Services Act* (amended) S. N. S. 2015, c.37, the legislation as it read before March 1, 2017 is therefore applicable to this proceeding.

[6] The initial hearing pursuant to section 39 was held August 25, 2016. The court made the necessary findings and granted the Minister's request for an initial

order for temporary care and custody. The interim hearing was adjourned for completion on September 15, 2016.

[7] At the September 15 hearing, the court, with the consent of the respondent, granted the Minister's request for extension of the order for temporary care and custody and authorized a psychological assessment and services for the respondent.

[8] With the consent of the parties, a combined prehearing and protection hearing was held November 10, 2016. The respondent consented to the protection finding as requested by the Minister as well as extension of the existing order for temporary care and custody. The court granted the Minister's protection application and confirmed that the child was in need of protective services pursuant to paragraphs (b), (g), and (ja) of section 22 (2).

[9] A combined prehearing and disposition hearing was held February 2, 2017. The respondent consented to the Minister's disposition application, subject to a reservation of rights. The Court granted the Minister's disposition application and confirmed a further order for temporary care and custody.

[10] Review hearings were held April 27, 2017 and July 10, 2017. On both occasions the Court granted the Minister's request for extension of temporary care and custody with the consent of the respondent.

[11] Pursuant to Review Application and Notice of Hearing dated September 20, 2017, the Minister requested that the child F. be placed in the permanent care and custody of the Minister.

[12] A review hearing was held October 3, 2017. Counsel for the respondent confirmed that the respondent was opposed to the Minister's application for permanent care and custody but indicated the respondent's willingness to extend the existing order for temporary care and custody pending a further review hearing and prehearing on January 4, 2018. The court also scheduled the matter for final hearing commencing January 29, 2018. The court confirmed that the existing order for temporary care and custody would remain in force and effect pending the January 4 hearing.

[13] A combined review hearing and pretrial was held January 4, 2018. At the conclusion of that hearing the court confirmed that the existing order for temporary care and custody would remain in force and effect pending completion of trial and

the court's determination of the Minister's application for permanent care and custody.

Issues

[14] The ultimate issue for determination is whether or not the child F. (DOB November **, 2015) should be placed in the permanent care and custody of the Minister.

[15] In determining this issue the court must also consider whether or not the child continues to be in need of protective services at this point in the proceeding.

[16] If the Court grants the Minister's request for an order for permanent care and custody, the court also has to determine the Minister's request that the order not include any provision for access in favour of the respondent mother.

Review of Evidence

[17] The paragraphs that follow contain a summary of the evidence presented during trial on January 29th. It is a summary and as such not intended to be comprehensive. However, I would confirm that for purposes of this decision I have carefully reviewed and considered all the evidence including the *viva voce* testimony as well as the documentary exhibits.

[18] The Minister called three witnesses; long-term protection worker Leanne McDonald, therapist Edith Verheuel and the family support worker Jonna Francis.

[19] The respondent mother was the only other witness to testify.

[20] Three exhibit booklets were entered on behalf of the Minister by consent.

[21] Exhibit 1 contains the pleadings filed by the Minister. It includes copies of all affidavits submitted by the long-term protection worker Leanne McDonald, as well as the affidavit of family support worker Jonna Francis sworn December 20, 2017.

[22] Exhibit 1 also includes the affidavit of Susan Simpson, the casework supervisor for the adoption unit of the New Glasgow District office, Department of Community Services, sworn December 21, 2017. The affidavit of Ms. Simpson was admitted by consent with a waiver of cross-examination.

[23] Exhibit 2 is a brochure containing case recordings and child in care recordings relating to agency involvement from July 2015 through to December 2017. The respondent consented to the brochure being introduced into evidence.

[24] The reports of Sheila Bower-Jacquard, registered psychologist, and Dr. Maryna Pogosyan, psychiatrist, were admitted by consent of the parties. Counsel for the respondent waived cross-examination of both experts. Their reports and CVs are found within Exhibit Book 3, as well as the reports of therapist Edith Verheuvell.

[25] Ms. Bower-Jacquard submitted a Mental Health Assessment Report for the respondent. The assessment occurred between May 16, 2016 and August 2, 2016. It is a detailed assessment with a series of attached appendices. The assessment confirms that the respondent mother's cognitive skills range from low average to average except for one subtest which fell in the superior range. At page 21 of her assessment Ms. Bower-Jacquard indicates as follows:

The information gathered suggests that L. meets the diagnostic criteria for Avoidant Personality Disorder. This suggests a pervasive pattern of behaviours that will require diligent and consistent intervention. This is complicated by her depressive and anxiety symptoms. At this time she does not seem to meet the criteria for ADHD as I feel her inattention is likely a result of anxiety. This young woman seems to have struggled since her adolescence and seems to have a complicated relationship with her father that likely has unresolved issues. Medication could be considered and once she makes progress it would be beneficial to set goals to help prevent a recurrence of problems. Therapy should be weekly at first to alleviate anxiety, depressive hopelessness, and personality dysfunction, as well as monitoring alcohol and substance use.

[26] Dr. Pogosyan's psychiatric assessment was undertaken on February 17, 2017 (incorrectly identified as February 17, 2016 on first page of assessment) and she subsequently submitted a report dated February 25, 2017. In the Impressions section of her report, at page 20, Dr. Pogosyan indicates as follows:

In a summary, L. is a young mother of a child who is currently apprehended from her care. It appears that L. is an immature individual who displays having traits of borderline personality disorder, which are evident of chronic instability, having tendency toward intense emotions, impulsivity and urgently seeking a replacement relationship to provide care and support.

[27] Later in her assessment, Dr. Pogosyan confirmed that the respondent meets the criteria for Major Depressive Disorder as well as Panic Disorder.

[28] Dr. Pogosyan's recommendations included medications. She recommended a mood stabilizer as well as Paxil to relieve anxiety. Dr. Pogosyan also recommended insight oriented therapy and parental skills education.

[29] Long-term protection worker Leanne MacDonald was the initial witness to testify on behalf of the Minister.

[30] Ms. MacDonald was referred to Exhibit 1 and acknowledged that her sworn affidavits were contained within the exhibit.

[31] Ms. MacDonald explained that the decision to take the child into care in August 2016 was made after the family support worker noticed that there was a deep scrape on the back of the child's head that L.G. couldn't explain. There were concerns about L.G.'s ability to monitor the child and that there were hazards in the home that placed a child at risk. The agency was also concerned about the child's nutrition and whether food was being properly stored. Ms. MacDonald's affidavit sworn August 23, 2016, as found in Exhibit Book 1, tab 2, provides more detail with respect to the circumstances that led to the decision to take the child into care on August 18, 2016, per paragraphs 131 to 154.

[32] Ms. MacDonald explained why the agency decided to transition towards a supervisory order in the summer of 2017. She testified that things had been going well and that the agency had seen improvements with respect to L.G.'s attention span and she wasn't as quick to anger, even though the condition of the home remained inconsistent. They thought it was an opportunity to see whether the respondent would be able to maintain progress and demonstrate the ability to provide adequate parenting. She explained that they decided to increase the respondent's parenting time in the hopes of transitioning the child back to her care under a supervision order.

[33] Ms. MacDonald indicated that they tried to get creative, think outside the box, and to be encouraging and positive.

[34] When asked what was it that led to the decision to seek permanent care she testified that the respondent was not always honest and, while initially the lies were little white lies, she indicated that it progressed to involve things that were more concerning, such as not taking her medication appropriately. She also indicated

that the respondent could only spend approximately 20 minutes with the child and then she would need a break, and was making decisions that weren't in the child's best interests.

[35] Ms. MacDonald's affidavit of September 28, 2017, tab 19 of Exhibit 1, paragraphs 12 through 30, provides a more detailed account of the attempted transition and the difficulties that were encountered in July and August 2017 leading to the decision to request permanent care.

[36] At one point during her direct examination Ms. MacDonald was referred to the respondent's affidavit, paragraph 26, wherein the respondent suggests that she had some isolated setbacks in her progress in July and August 2017. Ms. McDonald testified that she wouldn't see it as isolated. She testified that when the agency stopped and looked at the situation in its entirety, there were ongoing issues with respect to lack of follow through, lack of insight, immaturity, not placing the child's needs ahead of her own, and concerns about the respondent being dishonest.

[37] When asked what concerns she would have if the child were returned to the respondent's care Ms. MacDonald indicated that the respondent was young and immature and she worried about her ability to protect the child. She expressed concern about safety issues not being properly addressed and indicated that she felt that the respondent would struggle with putting the child's needs in front of her own.

[38] Edith Verheuvél, family therapist, was called to testify as part of the Minister's case on direct. By consent, Ms. Verheuvél was qualified to give opinion evidence as a family therapist.

[39] Ms. Verheuvél identified the reports that she had submitted respecting her involvement with the respondent as contained within Exhibit Book 3, dated January 20, 2017, April 12, 2017, June 25, 2017 and September 20, 2017. Her final report dated January 16, 2018 was introduced as Exhibit 4.

[40] In her second report, dated April 12, 2017, Ms. Verheuvél noted that the respondent had cancelled appointments without appropriate notice on three occasions during the month of March, and that the respondent explained that she was struggling with side effects from the increase in dosage of her medication as recommended by Dr. Pogosyan. Ms. Verheuvél noted in her report that the

respondent had been consistent in completing assigned homework. She recommended a continuation of individual therapy.

[41] In her third report, dated June 25, 2017, Ms. Verheuvél expressed her belief that the respondent had consistently made progress in achieving her goals in therapy.

[42] In her fourth report, dated September 20, 2017, Ms. Verheuvél noted that in August 2017 the respondent admitted that she had slacked off a bit in keeping the apartment clean and tidy and that she had advised the agency social worker that she needed to get back on track. Ms. Verheuvél expressed her belief that the respondent had made progress over the past several months in many areas of her life such as managing her anxiety and developing self-confidence. She recommended continuation of individual therapy.

[43] In her final report, dated January 16, 2018, Ms. Verheuvél indicated that since September 19, 2017 L.G. has been sporadic in her attendance for therapy sessions and has cancelled six scheduled appointments without appropriate notice and attended seven sessions. Based upon L.G.'s self reporting, Ms. Verheuvél expressed her belief that L.G. had benefited from individual therapy and was coping more effectively with her anxiety. Ms. Verheuvél acknowledged that she was unable to comment on L.G.'s ability to incorporate parenting skills but expressed her belief that L.G. loves her child.

[44] Ms. Verheuvél testified that the respondent had made as much progress as she is going to in dealing with the issues that had brought her to therapy. She stated that the respondent still has some growing up to do. She indicated that the respondent should be able to deal with her anxiety and other issues as long as she stays on her medication and continues her coping strategies.

[45] Jonna Francis testified on behalf of the Minister. Ms. Francis is a family support worker.

[46] Ms. Francis reviewed the history of her involvement with the respondent. At one point during her direct examination she was asked what her concerns were when family support services were terminated in September 2017. Ms. Francis testified that at that point there was still a lot of concern in relation to garbage, dishes not being done, and some safety hazards for the child around the apartment. She felt that the respondent may have been cleaning up before her visits because garbage would be outside the door and noted that L.G. herself admitted to that at

times. She confirmed that the apartment just wasn't consistently clean. When asked what the safety hazards for the child were, by way of example, she indicated that during one home visit there was makeup left that the child put in his mouth and she referred to other hazards such as pots being always turned out on the stove, stuff on the table and debris on the floor.

[47] Ms. Francis testified that she had tried an abundance of methods during the parenting education sessions to try to get the respondent to understand and how to implement but with only limited effect. She acknowledged that the respondent was consistent in her participation in education support sessions and very pleasant to deal with, and appeared to understand what was being discussed however, follow through and application was a struggle.

[48] When asked about the three days of full day supervised access visits in August 2017, Ms. Francis testified that there was not a lot of planning for these visits, the condition of the apartment was a concern and the respondent did not understand the importance of being mindful of the child's needs, such as needing a nap or needing lunch.

[49] When asked to describe the respondent's overall progress in family support Ms. Francis testified that her progress was limited. She acknowledged that L.G. wanted to learn and loved the child however, at the end, when she looked at her summary from January 2017 and the concerns she had at that point in time, she concluded that those concerns were still present in August 2017. Family support ended because of L.G.'s lack of progress.

[50] Ms. Francis was also referred to paragraph 26 of the respondent's affidavit and confirmed that she did not see the events of July and August 2017 as isolated setbacks because the issues that were present at that time were issues that had been present previously, except for inconsistent medication taking.

[51] During cross-examination Ms. Francis confirmed that the progression planned for July and August was not able to proceed because of L.G.'s inability to be consistent.

[52] When discussing the extended access visits in August 2017, Ms. Francis explained that she wanted to see what things would look like if the child were home with the respondent for a full day. She wanted to see how the respondent was able to implement routine and follow through with lunch and snacks, and nap. When asked if the respondent was taking her medication as directed during those

visits Ms. Francis testified that the respondent said she was taking it consistently but afterwards admitted that she hadn't been.

[53] In responding to questions from the court, Ms. Francis testified that in July and August 2017 the respondent started to go backwards in her progress and she began to see inconsistencies in the home. Ms. Francis confirmed that she did see a noticeable change in the respondent as a result of her use of medication, but suggested that not taking her medication consistently led her to fall back into her old ways. She also said that even when L.G. was taking the medication consistently she was still seeing issues with her parenting.

[54] The case recordings as set forth in Exhibit 2 contain a much more detailed account of Ms. Francis' involvement with the respondent. Ms. Francis' case recordings for the period from June 23, 2017 to September 15, 2017 are found in tab F of Exhibit 2. Tab F also contains the detailed risk management conference minutes confirming the agency decision to request permanent care and custody.

[55] L.G. testified on her own behalf.

[56] At the outset of her direct examination L.G. was referred to her affidavit Exhibit 5. She confirmed that the information in her affidavit was true.

[57] When asked what the concerns were when the agency first became involved L.G. testified that her place was very unlivable and that most of her life she had been a hoarder and suffered from depression and anxiety, which caused her to not really clean. She hadn't treated her anxiety. She didn't have much support in the Truro area.

[58] L.G. testified that she felt that her parenting had improved significantly and was now better than when the agency was involved.

[59] L.G. acknowledged that her apartment can still get cluttered and indicated that she is in the process of getting rid of a lot of stuff but maintained that it has not been dirty in the past while.

[60] L.G. was asked what happened during July and August 2017. She indicated what happened was related to the medication and that she just kind of slipped on the medication. She maintained that things have gotten back on track since July and August.

[61] When asked about her future plans she said that she was currently seeking employment and if employed she would place the child in part-time daycare.

[62] She also testified that she would be moving in with a close friend and that this person was going to be a support for her. She identified her friend as a woman named A.C. whom she has known since 2009. She indicated that they first started talking about this plan in December but it wasn't actually brought up until a couple of weeks ago.

[63] When asked to describe her relationship with her son she testified that he is her absolute world and that every time he sees her he lights up.

[64] During cross-examination L.G. was asked why she had only attended about half her sessions with Edith Verheuvél since September. L.G. testified that it was due to appointments and some illness. She indicated she had dental and medical appointments. L.G. was referred to Ms. Verheuvél's report of January 16, which indicated that she had called to cancel appointments without appropriate notice on October 10, 17, November 14, 21, 12 and 19. L.G. testified that she believed she gave at least an hour notice before cancelling. It was then suggested to L.G. that she would have known her dental and medical appointment times well in advance and she then said that she had cancelled the appointments with Ms. Verheuvél not due to appointments but due to sickness. When she was asked if all the appointments through October, November and December were cancelled due to sickness she then responded in the negative and suggested she had been sick a lot but there have been one or two appointments that she had forgotten about.

[65] She acknowledged that she had presented several plans to the agency regarding future care of F. and that none of them were approved. She acknowledged that her mother hadn't put forward a plan to take care of the child. When asked if her mother was supportive of the child being adopted, she testified that her mother had told her that she supports him being adopted but would also like him to come home, providing L.G. was doing what the agency had told her to do.

[66] She was asked about her plan involving her friend A.C. and testified that A.C. lives in Onslow. A.C. is presently working at home and furthering her education. She indicated that A.C. was willing to look after F. and provide child care if she was working nights or evenings. It was pointed out to her that A.C. was not being called as a witness and L.G.'s explanation was that A.C. had not

indicated a willingness to be called as a witness until after L.G. had filed her affidavit.

[67] When asked why she had slacked off over the summer L.G. stated that she did slip up on her medication and that she took full responsibility for that. She explained that she missed a day and then she missed another day and then she just absentmindedly didn't take them.

[68] L.G. denied that she had ever said she had slacked off. She was then referred to Ms. Verheuvél's report from September 20 and the statement attributed to L.G., set forth in quotation marks at page 2; "When I was told that F. was coming home I got a little overconfident so I slacked off a bit in keeping the apartment clean and tidy.". L.G. didn't think she had said that to Ms. Verheuvél.

[69] L.G. suggested that she had only lied to the agency about use of medication on one occasion and that was when she said that the pharmacy did not have the medication ready for her when in reality she simply did not go to pick it up. When it was suggested to L.G. that it was the family support worker Ms. Francis who got her to call the prescription in to the pharmacy L.G. disagreed indicating that she had called it in herself. She was then referred to Ms. Francis' affidavit of December 20, 2017 at page 10, wherein it was indicated that Ms. Francis had asked the respondent to call in a prescription refill while Ms. Francis was present and the respondent did. L.G. continued to maintain that Ms. Francis was not present when she called in the prescription. When asked when the prescription medication problem happened L.G. suggested it was late August and when it was suggested to her that it was August 12 to the 14th she testified it would be right after that.

[70] When Ms. Lennerton suggested that she had the money to pay for the prescription L.G. testified that she did not. She was then referred to page 13 of Ms. Francis affidavit of December 20, 2017 where it indicates that Ms. Francis asked L.G. to be truthful about whether she'd attended the pharmacy on August 12 and L.G. had admitted that she had not attended and had lied about it and she had been unable to explain why she had lied as she had the money to pay for her prescription. L.G. then testified that she never said anything about having money to pay for it and that that was not true.

[71] During her cross-examination L.G. testified that she and M.V. are supports to each other and have been romantically involved. She acknowledged that she had discussed the possibility of she and M.V. moving in together a few months ago but that she was no longer planning to move in with him. Instead, she is planning to

move in with A.C.. When asked if there was a possibility she would move in with M.V. at some future point she testified that that might be a possibility and that they had just decided they shouldn't rush into it.

[72] When asked what she would do when her therapy with Ms. Verheuvell was ended she testified that she had another worker she could see at the Truro Hospital. When asked if she had contacted that person given that the therapy with Ms. Verheuvell was coming to an end she said that she had called her. She identified the individual as named Lauren. She suggested that Lauren works at Mental Health at the hospital. When asked when the last time she had contact with Lauren was, she testified that it was shortly before she moved back to Truro. She was then asked whether or not she knows if Lauren still works of the hospital and admitted that she doesn't currently know if she is still there.

[73] L.G. indicated that she felt she had made enough progress to justify the child coming home without risk. She did not believe that what happened in the summer was sufficient to justify not returning the child to her care. She insisted that she had only lied one time about taking her medication. She could not recall being dishonest with the agency about other things.

[74] During questioning by the court, L.G. testified that she felt the medication had positive impact on her parenting and made her much more engaged and able to concentrate. She testified that the problem that arose in July and August just kind of happened and that she couldn't honestly pinpoint when it happened, but that it was only for about a week. She then testified that it was the weekend involving the daylong supervised access visits in August that really made her realize how much missing her medication affected her. When asked why she had put the transition at risk by not taking her medication as prescribed she testified that she really didn't have an answer.

Submissions

[75] In closing argument counsel for the respondent indicated there was no dispute respecting the law or legal principles applicable to determination of the Minister's application for permanent care and custody.

[76] Ms. Smith pointed out that the Minister has the burden of proof in relation to the issue of whether or not the child continues to be need of protective services, as well as proof that an order for permanent care and custody would be in the best interests of the child.

[77] Ms. Smith submitted that the risks that had been identified at the outset of the proceeding had been remediated and therefore the child should be returned to the care of the respondent.

[78] Ms. Smith emphasized the extent to which the respondent mother had cooperated, noting that she'd participated in assessments, as well as therapy and family support services.

[79] Ms. Smith referred to a setback occurring in July and August 2017 when the respondent went off her medication. However, she said that the respondent then realized how it affected her parenting and resumed taking the medication.

[80] Ms. Smith maintained that the respondent was able to meet the standard of good enough parenting and can provide a safe and risk-free home for the child. She submitted that return of the child to the care the respondent would be in the best interests of the child.

[81] Ms. Lennerton submitted that it would be in the best interests of the child to be placed in the permanent care and custody of the Minister.

[82] She confirmed that the Minister's long-term plan is premised upon adoption and therefore an order providing for access post permanent care and custody would not be appropriate.

[83] She acknowledged that L.G. had made some progress but suggested not enough progress.

[84] Ms. Lennerton stated that the three full day supervised access visits in August were arranged in the hope that L.G. could demonstrate or show that she could provide adequate parenting. This was a critical time for the respondent. Unfortunately, the respondent didn't take her medication and she was dishonest about the use of her medication.

[85] Ms. Lennerton submitted that good enough parenting had not been achieved.

General Principles Applicable to a Request for Permanent Care and Custody Pursuant to Section 46 (5) as per Case Authorities

[86] In Minister of Community Services v. C. B., 2012 NSSC 358, Justice Jollimore determined an application by the Minister for an order for permanent care and custody without provision for access for the respondent mother. In granting the Minister's application Justice Jollimore offered the following analysis commencing at paragraph 19:

[19] The purposes of the *Children and Family Services Act* are to protect children from harm, to promote the family's integrity and to assure children's best interests. These purposes are expressed in the *Act's* preamble and they are also repeated in the articulation of "best interests" found in subsection 3(2).

[20] In *Children and Family Services Act* proceedings, the children's best interests are paramount. At different points in a child protection application, the *Act* directs me to consider "the best interests of a child" when making an order or a determination. When that happens, subsection 3(2) dictates that I consider those of enumerated circumstances which are relevant.

[21] This is an application to review a temporary care and custody order. Section 46 of the *Children and Family Services Act* outlines the process I'm to follow in this review. Before I make an order in a review, I must consider: whether the circumstances have changed since the previous disposition order was made; whether the plan for the children's care applied in that order is being executed; the least intrusive alternative that's in the children's best interests; and whether the requirements of subsection 46(6) have been met. Subsection 46(6) says that I may make a further temporary care and custody order unless I am satisfied that the circumstances which justified the earlier order are unlikely to change within a reasonably foreseeable time that doesn't exceed the statutory deadline....

[33] The Minister asks that I order the children be placed in its permanent care and custody pursuant to section 42(1) (f). Before I may do this, I must consider subsections 42(2) and 42(4) of the *Act*. The former section mandates that I do not make an order that removes the children from their mother unless I am satisfied that less intrusive alternatives have been tried and have failed, have been refused, or would be inadequate to protect them. The latter section instructs that I shall not make a permanent care and custody order unless I am satisfied that the circumstances which justify the order are unlikely to change within a reasonably foreseeable time, not exceeding the maximum time limits. I have already addressed the latter point, above, but will return to it, briefly, below.....

[42] According to subsection 42(3) of the *Children and Family Services Act*, I am not to place children in the Minister's permanent care and custody without

considering whether there is a possible placement with a relative, neighbor or other member of the children's community or with extended family. Here, no such placement has been identified for J or C.

[87] In Mi'Kmaw Family and Children Services v. KDo, 2012 NSSC 379, Justice Forgeron considered an application for permanent care and custody. Justice Forgeron identified the following principles commencing at paragraph 18:

[18] In this case, the agency is assigned the burden of proof. It is the civil burden of the proof. The agency must prove its case on a balance of probabilities by providing the court with "clear, convincing, and cogent evidence": **C. (R.) v. McDougall**, 2008 SCC 53. The agency must prove why it is in the best interests of the children to be placed in the permanent care and custody of the agency, according to the legislative requirements, at this time.

[19] In making my decision, I must be mindful of the legislative purpose. The threefold purpose is to promote the integrity of the family, protect children from harm, and ensure the best interests of children. The overriding consideration is, however, the best interests of children as stated in sec. 2(2) of the *Act*.

[20] The *Act* must be interpreted according to a child centred approach, in keeping with the best interests principle as defined in sec. 3(2). This definition is multifaceted. It directs the court to consider various factors unique to each child, including those associated with the child's emotional, physical, cultural, and social development needs, and those associated with risk of harm.

[21] In addition, sec. 42(2) of the *Act* states that the court is not to remove children from the care of their parents, unless less intrusive alternatives have been attempted and have failed, or have been refused by the parent, or would be inadequate to protect the children.

[22] When a court conducts a disposition review, the court assumes that the orders previously made were correct, based upon the circumstances existing at the time. At a review hearing, the court must determine whether the circumstances which resulted in the original order, still exist, or whether there have been changes such that the children are no longer children in need of protective services: sec. 46 of the *Act*; and **Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)** [1994] 2 S.C.R. 165.

[23] Past parenting history is also relevant as it may be used in assessing present circumstances. An examination of past circumstances helps the court determine the probability of the event reoccurring. The court is concerned with probabilities, not possibilities. Therefore, where past history aids in the determination of future probabilities, it is admissible, germane, and relevant: **Nova Scotia (Minister of Community Services) v. Z.S.** 1999 NSCA 155 at para. 13; **Nova Scotia (Minister of**

Community Services) v. G.R. 2011 NSSC 88, para. 22, as affirmed at **Nova Scotia (Minister of Community Services) v. G.R.** 2011 NSCA 61.

[24] Section 42(4) of the *Act* provides the court with the authority to make a permanent care order, even when the legislative time lines have not been exhausted, if circumstances are unlikely to change within a reasonably foreseeable time. Section 42(4) states as follows:

(4) The court shall not make an order for permanent care and custody pursuant to clause (f) of subsection (1), unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding the maximum time limits, based upon the age of the child, set out in subsection (1) of Section 45, so that the child can be returned to the parent or guardian. 1990, c. 5, s. 42.

Legal Analysis

[88] The Minister is seeking an order for permanent care and custody with respect to the child F..

[89] The Minister bears the burden of proof in establishing that an order for permanent care and custody would be in the best interests of the child. The burden of proof is the civil burden based on balance of probabilities (F.H. v. McDougall, 2008 SCC 53).

[90] In determining whether or not the burden of proof has been met in any given case, it is the responsibility of the trial judge to appropriately review all of the evidence.

[91] I have taken note of the relevant provisions of the *Children and Family Services Act* S.N.S. 1990, c.5.

[92] For purposes of this decision I have considered the preamble to the legislation which underscores the purpose and philosophy of the *Act* and clearly emphasizes that children are only to be removed from the care of their parents when all other measures are inappropriate.

[93] The purpose of the *Children and Family Services Act* as set forth in section 2 (1), namely, to protect children from harm, promote the integrity of the family and assure the best interests of children must be born in mind throughout.

[94] It is important to acknowledge that in all proceedings under the *Act* the paramount consideration is the best interests of the child as per section 2 (2). That provision confirms the need for a child focused or centric approach to the determination of child protection proceedings.

[95] I have considered section 3 (2), and the relevant circumstances as listed therein, in determining the best interests of the child.

[96] I have also considered the agency's obligation to provide services as per section 13.

[97] I have taken note of the relevant provisions as set forth in section 22 (2) in determining whether the child continues to be in need of protective services.

[98] I have also taken into consideration sections 42, 45, 46, and 47.

Need of Protection

[99] The Minister maintains that the child is need of protective services in accordance with section 22 (2), subparagraphs (b), (g), and (ja).

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

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

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

(f) the child has suffered emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour in 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;

(g) there is a 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;...

(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 a refuses or is unavailable or unable to consent to services or treatment to remedy or alleviate the harm;

(ja) there is a substantial risk of the child will suffer physical harm inflicted or caused as described in clause (j)....

[100] Section 22 (1) reads as follows; “In this section, “substantial risk” means a real chance of danger that is apparent on the evidence.”

[101] In the Minister of Community Services v. S.C. and M.S., 2017 NSSC 336, Justice Jollimore indicated as follows:

[35] “Substantial risk” is a real chance of danger that is apparent on the evidence: subsection 22(1) of the *Children and Family Services Act*. It is the real chance of physical or emotional harm or neglect that must be proved to the civil standard. That future physical or emotional harm or neglect will actually occur need not be established on a balance of probabilities: *MJB v. Family and Children Services of Kings County*, 2008 NSCA 64 at paragraph 77, adopting *B.S. v. British Columbia (Director of Child, Family and Community Services)*, 1998 CanLII 5958 (BC CA), at paragraphs 26 to 30.0

[36] If the Minister establishes that there is a real chance of harm, the question is purely one of D’s best interests, as between permanent care and a return to the parents. If the Minister does not establish this that there is a real chance of harm, then D must be returned to her parents.

[102] A protection finding was made November 10, 2016 with the consent of the Respondent.

[103] The court must determine whether or not the child remains in need of protective services at this point in time. If the child is no longer in need of protection the Minister’s application for permanent care must be dismissed.

[104] The Plan of Care, as filed on behalf of the Minister in support of the Minister’s application for permanent care and custody, dated September 28, 2017, identifies the following issues of concern:

1. history of mental health concerns,
2. inadequate parenting skills and,
3. unfit living conditions

[105] These same concerns were also identified in the Minister's original Plan of Care dated January 27, 2017.

[106] The Minister maintains that these concerns support and justify the conclusion that if the child were returned to the respondent mother's care, the child would be in need of protective services per section 22(2)(b), (g) and (ja).

[107] In the paragraphs that follow I will consider each of these concerns in light of the evidence presented.

Mental Health Concerns

[108] Agency case recordings, as set forth in Exhibit 2, reveal that from the outset of agency involvement in July 2015, prior to the birth of the child, referral and collateral sources identified mental health issues in relation to the respondent. Referral sources included the respondent's brother, mother and the biological father of the child.

[109] The respondent moved from Truro to Hubbards in October 2015 and at that point the file was transferred from Colchester District office to the Lunenburg District office. Following the relocation to Hubbards, L.G. agreed to engage with local mental health services.

[110] On October 26, 2015 L.G. herself advised agency workers that she had mental health issues and suffered from seasonal depression.

[111] Following birth of the child L.G. contacted mental health and addiction services on December 2, 2015 and made an initial appointment.

[112] As of February 22, 2016 she had attended two appointments with a mental health counsellor in Chester and missed a third appointment. When contacted, the counsellor advised that L.G. had a history of anxiety. The counsellor also confirmed that he had not recommended that the counselling sessions end as had been reported by L.G..

[113] As of March 16, 2016 the agency concluded that L.G. had not followed through with mental health appointments. A decision was made to refer L.G. and her then partner, J.C., for psychological assessments.

[114] As of June 16, 2016 L.G.'s counsellor at Mental Health and Addiction Services advised that he had not seen L.G. in over a month. He confirmed that he had seen her on January 22, 2016 and on April 14, 2016.

[115] On July 15, 2016 L.G. advised that she would be moving back to Truro because she had been evicted from her apartment.

[116] Following the taking into care of the child on August 18, 2016, the Truro agency received a psychological assessment for the respondent submitted by Sheila Bower-Jacquard, registered psychologist. In accordance with Ms. Bower-Jacquard's recommendations the agency arranged for L.G. to participate in individual therapy with Edith Verheuvél. In addition, the agency arranged for a psychiatric assessment to be undertaken by Dr. Pogosyan.

[117] Dr. Pogosyan submitted a Psychiatric Assessment Report dated February 25, 2017 confirming a diagnosis of Major Depressive Disorder (moderate severity) and Panic Disorder. Dr. Pogosyan's recommendations included medication (mood stabilizer as well as medication to alleviate anxiety), individual therapy and parental skills instruction.

[118] L.G. commenced taking medication as prescribed by Dr. Pogosyan. While the respondent experienced some difficulty in adjusting to the medication, especially when increasing dosage, as of April 21, 2017 the agency observed positive indicators, including improved participation in family support services.

[119] As of June 27, 2017, L.G. continued to participate in individual therapy and reportedly was taking her prescribed medication. Despite continuing concerns regarding L.G.'s parenting skills, the family support worker also observed some positive changes. The agency decided to attempt to progress L.G.'s access with the child working towards the goal of returning the child to the care and custody of L.G. under the terms of a supervisory order.

[120] Ms. Verheuvél testified that the respondent had made a significant amount of progress in dealing with her anxiety, in particular her social anxiety. Ms. Verheuvél stated that she had seen improvement in the respondent's self-esteem and felt that the respondent was dealing better with her frustrations. However, she also expressed her belief that L.G. had made as much progress as she was going to and indicated that L.G. would be okay as long as she stays on her medication.

[121] The evidence indicates that the respondent did not take her medication regularly in July and August. When asked what happened or why she stopped taking her medication the respondent was unable to provide an explanation other than absentmindedness. Unfortunately, the respondent's lapse in her medication usage occurred at a critical point in her involvement with the agency.

[122] In June 2017 the agency had decided, based upon L.G.'s progress, to move towards a supervisory order. In anticipation of that change the agency also decided to increase L.G.'s supervised parenting time. L.G.'s untimely lapse in use of her medication had predictable consequences.

[123] Involved workers became increasingly concerned that L.G. was not being truthful with the agency about her use of her medication and other issues. The respondent began to cancel family support sessions claiming she was sick when she was not and spending a lot of time away from her apartment rather than working at keeping it reasonably clean.

[124] The respondent herself acknowledged to workers that she had slacked off and committed to putting forth more effort. However, she did not admit to not taking her medication despite repeated questioning from the workers. Indeed, in July and August 2017, she continued to not use her medication as prescribed even after being questioned by workers.

[125] Agency workers continued to note concerns throughout July and August. On July 12, 2017 workers again expressed concern about L.G. being dishonest with them and warned her that the proposed transition plan could not proceed unless she showed drastic improvement. The respondent indicated that she understood and committed to doing what she needed to do. Unfortunately, the respondent did not follow through.

[126] A key component of the transition process involved full day supervised visits in August. These visits were implemented to assist in making the final determination as to whether or not it would be appropriate to progress to a supervision order. These full-day visits did not go well. There were continuing concerns with respect to the cleanliness of the home. Workers observed that L.G.'s interaction with the child during the visits suggested a lack of insight as to the child's developmental stage and needs. She was not always responsive to the child's cues. There were ongoing concerns respecting her use of medication which the respondent consistently denied.

[127] On August 15, 2017 the family support worker and long-term protection worker met with the respondent to advise that the transition to a supervisory order would be unlikely due to the ongoing concerns and lack of progress observed during July and August including, in particular, during the full day supervised visits in August.

[128] In her affidavit, Exhibit 5, the respondent acknowledges that she was not consistently taking her medication during the months of July and August 2017 and as a result had what she refers to as “some isolated setbacks” in her progress. She indicates that subsequently she resumed taking her medication and maintains that she continues to consistently take it.

[129] Clearly, the respondent made progress during her therapy with Ms. Verheuvél. However, Ms. Verheuvél made it clear that the respondent’s ability to maintain progress in dealing with her anxiety and other issues would be conditional upon her continued use of her medication.

[130] The respondent herself recognized the importance of proper use of her medication by linking it to her ability to keep her home at an appropriate level of cleanliness and maintain adequate parenting (See respondent’s affidavit paragraph 26 and 30).

[131] During her interaction with agency workers during the month of July 2017, and well into August, the respondent did not disclose that she was not taking her medication as prescribed.

[132] Her inconsistent use of her medication coincided with the workers’ observations of her inability to provide adequate parenting on a consistent basis.

[133] Unfortunately, there have been continuing concerns regarding the respondent’s credibility since the outset of agency involvement. L.G. has been untruthful with workers in many instances.

[134] Based upon the evidence the court cannot view L.G. as a reliable witness when it comes to the issue of her use of her prescription medication or, more importantly, her assertion that she will continue to take her medication consistently.

[135] The court acknowledges that there are many parents with mental health issues who are certainly capable of providing adequate parenting. Many

individuals with a mental health history or mental health issues are wonderful parents.

[136] However, based upon the evidence in this particular case the court is unable to accept or rely upon the respondent's assertion that she will continue to take her medication consistently (I will comment further on assessment of the respondent's credibility later in this decision).

[137] I find that on balance of probability that it is likely that the respondent will not take her medication regularly, or as prescribed, and as a result there is a continuing and substantial risk that L.G.'s mental health issues will impact negatively upon her ability to maintain adequate or good enough parenting.

[138] Separate and apart from this, the evidence supports the conclusion that the other factors as identified by Dr. Pogosyan in her psychiatric assessment, including emotional immaturity, confirm a continuing substantial risk of neglect and abuse, as well as emotional harm.

[139] At page 21 Dr. Pogosyan offers the following opinion:

.... L.'s pregnancy was unexpected and she was not ready to have a child neither emotionally nor financially and she had to rely on external sources to survive. L.'s emotions are immature and she continues acting on feelings of frustrations and anger. Emotionally immature parent is frequently so self-obsessed that she fails to notice the child's feelings and emotional needs; this can leave their children feeling emotionally insecure, existentially lonely, empty and hollow. In addition, as a parent L. would have difficulties to provide structure and discipline to her child, those features that she rebelled against and did not master herself. Therefore combination of emotional immaturity (egocentrism, shallow but intense emotions, poor empathetic ability) and long-standing difficulties with cleanliness, orderliness, self-care, may place her child in high risk of neglect and/or abuse.

[140] The court accepts and relies upon the opinions of Dr. Pogosyan in concluding that the respondent's mental health/emotional issues, as identified by Dr. Pogosyan, create a continuing substantial risk of physical and emotional harm for the child. Both her family skills worker and long term protection worker also identified continuing concerns about the immaturity of the respondent and its negative impact upon her ability to provide adequate parenting.

Inadequate Parenting Skills

[141] Referrals received at the outset of agency involvement in July and August 2015 included expressions of concern with respect to the respondent's ability to parent an infant. Issues identified by referrals included hygiene, condition of the respondent's apartment, and her inability to properly care for pets. Referral sources expressing these concerns included the respondent's mother and brother.

[142] On October 1, 2015 when an agency worker spoke with L.G., she herself advised the worker that she would not bring a baby home to her apartment given its condition.

[143] On October 15, 2015 L.G. advised the Truro agency that she was moving to Hubbards. As a result the file was transferred to the Lunenburg District Child Welfare Office. The respondent ended up living in Chester with her then boyfriend J.C..

[144] The Lunenburg agency noted the issues of concern at that point as including mental health concerns, aggression, poor self-care, neglect of animals, inability to manage and create a safe and healthy living environment and lack of follow through with services. It was noted that the respondent's plan at that point in time was care for the baby in J.C.'s parents' home. A file was opened to provide voluntary services including family support services.

[145] The child F. was born November **, 2015. The first family support worker session was December 1, 2015. At time of that initial meeting, J.C. expressed concern about L.G. indicating that he needed to clean up after her every day and that he was doing most of the diaper changes during the night.

[146] Family support services continued throughout December 2015 and January 2016. L.G. continued to struggle with keeping her residence clean, even with the support of J.C.'s mother. On January 25, 2016 L.G. and J.C. moved into their own apartment.

[147] On March 2, 2016 a worker noted that the condition of the couple's home was the worse she had ever seen.

[148] On March 22, 2016 J.C. reported that the respondent was sleeping with the child in her bed and that he had witnessed her elbow and slap the child in the head while they were sleeping. On one occasion she had accidentally kicked the baby.

On March 31, 2016 L.G. admitted that she had not been honest with the agency about the child sleeping in her bed and when asked why she had been dishonest she just shrugged.

[149] As of April 20, 2016 an agency worker noted that the cleanliness of the home was on and off.

[150] On August 21, 2016 J.C. advised that he did not sleep with L.G. and F. because F. had fallen out of bed. The respondent denied the allegation initially and then admitted that this had happened. J.C. indicated that L.G. was manipulating and constantly lying to agency workers.

[151] A risk management conference held May 11, 2016 noted that there had been minimal change. It was noted that L.G. was providing conflicting information to the agency and that she struggled with follow-through. The case recording for May 24, 2016 confirms a decision to keep the file open for long term service to address parent mental health and risk of physical and emotional harm to the child. L.G. and J.C. had separated at that point.

[152] On July 15, 2016 the respondent advised the agency that she had been evicted from her apartment and was moving to Truro. The file was transferred back to the Truro agency.

[153] When long-term protection worker Leanne McDonald was finally able to visit with the respondent at her residence on August 9, 2016, she observed the apartment to be dirty even though the respondent had just moved in a couple of weeks earlier. The living room was the only safe floor space for the child.

[154] A decision was made to assign family support worker, Jonna Francis, to work with L.G.. Ms. Francis worked with the respondent and child from August 2016 to September 2017. Family support services included hands-on work during access visits and separate parenting education sessions in L.G.'s home.

[155] When Ms. Francis attempted to visit the home on August 18, 2016 the respondent did not want her to enter the apartment. When workers were finally able to enter the home they observed the home to be dirty and hazardous for the child. It was noted that the child had a long cut on the back of his head and L.G. appeared unaware of the injury and could not explain how it had occurred. As a result of the condition of the home and the associated risk for the child, a decision was made to take the child into care in order to ensure the child's safety.

[156] Following the taking into care Ms. Francis continued to participate in weekly access visits as well as weekly parenting education sessions with L.G..

[157] During her testimony Ms. Francis explained the methods that she used in trying to work with the respondent. She explained that because lists were anxiety provoking for L.G., she developed charts in relation to household maintenance as well as flowcharts. She also used videos. She repeated information as required. She provided feedback. She provided developmental checklists. She and L.G. worked on planning. She provided lots of modelling and demonstration.

[158] Ms. Francis testified that L.G. was consistent in attending her parenting education sessions and was very pleasant during the sessions. However, she observed that the respondent had difficulty following through and employing what had been taught during the access visits. Ms. Francis acknowledged L.G. was positive when she did in fact engage with F., however planning for visits was very limited and the respondent did not appear to focus on F.'s development or learn how to promote the child achieving his milestones.

[159] During her testimony she confirmed that during the three days of full access visits that occurred in August 2017 the respondent did not demonstrate an understanding of F.'s needs, including the need for routine. The focus appeared to be more on having fun.

[160] Ms. Francis testified that overall L.G.'s progress was limited. Family support services ended in September 2017 due to the lack of progress.

[161] During cross-examination Ms. Francis confirmed that the standard expected for parenting was "good enough" and that she wanted the respondent to be consistent in her parenting. While there was progress in the spring of 2017, when the process of transitioning the child home commenced in July, L.G. was unable to be consistent.

[162] In response to questions from the court she testified that during the summer months the respondent started to go backwards in her progress and was not completing the strategies that had been discussed in family support sessions.

[163] The respondent's testimony emphasized her consistent participation in family support sessions. She maintained that she participated actively in the sessions and as a result her parenting skills improved. The respondent referred to the problems that occurred in July and August 2017 as isolated setbacks. She

testified that she was now back on track. L.G. maintained that she has improved as a parent and now has a better understanding of her child's developmental needs.

[164] The respondent has had the benefit of extensive supports and services during the lengthy history of agency involvement. Family support assistance was provided by both the Lunenburg agency as well as the Truro agency. The family support services provided by the Truro agency were prolonged and intensive. The family support worker was mindful of the recommendations made by Sheila Bower-Jacquard and utilized teaching strategies in accordance with the assessment report.

[165] In accordance with Dr. Pogosyan's recommendations, L.G. commenced taking medication in the spring of 2017. Despite some difficulty in adjusting to increased dosage some positive change was noted by the agency. The medication appeared to alleviate the respondent's anxiety and to have positive impact upon her participation in family support sessions.

[166] In July and August 2017 both the family support worker and the long-term protection worker observed regression with respect to the cleanliness of the home as well as the respondent's interaction with the child. There were continuing concerns as to whether L.G. was being honest in her interaction with the workers.

[167] Three days of extended supervised access in August, intended to assist in making a final decision to progress to a supervisory order, resulted in increased concerns. Despite the opportunity afforded to her, L.G. was not able to demonstrate an ability to provide good enough parenting. As a result, the planned progression did not proceed.

[168] L.G. has not been able to demonstrate adequate insight into the importance of routine when it comes to parenting of the child. She has not been able to adequately recognize the importance of the child's developmental needs when it comes to her interaction with the child. Despite her awareness of the safety issues associated with the condition of her apartment, the respondent was unable to demonstrate a consistent ability to maintain the adequate housekeeping standard she herself acknowledged to be required if the child was to be placed in her care.

[169] While there is no doubt that L.G. loves her son, after careful consideration of the evidence, regrettably I'm unable to conclude that the respondent is capable of providing good enough parenting and adequately attending to the child's needs on a consistent basis. I further find that the respondent's inability to provide adequate

parenting on a consistent basis creates a substantial risk of physical and emotional harm.

Unfit Living Conditions

[170] The Minister's concern with respect to unfit living conditions is clearly interconnected with the concerns relating to mental health and inadequate parenting skills.

[171] The evidence does not support or justify the conclusion that L.G.'s inability to keep her home reasonably clean on a consistent basis is solely caused by her mental health issues. However, the evidence would certainly suggest that when the respondent is experiencing anxiety or depression she is more likely to encounter difficulty maintaining adequate housekeeping standards. The evidence also suggests that when the respondent is not using her medication appropriately there is an increased risk of unfit living conditions

[172] According to Dr. Pogosyan, the respondent's immaturity is also an issue that impacts upon her ability to attend to the children's emotional needs and to provide an appropriate level of structure and routine. Routine is normally an important part of maintaining adequate housekeeping standards. It is also normally an important part of child care, especially for younger children.

[173] At the outset of the Truro agency's involvement unfit living conditions, and associated hazards for the child, was one of the primary issues. At one point the respondent herself acknowledged that even she recognized that she could not bring a newborn into her home environment.

[174] After her move to Chester, the Lunenburg agency also identified persistent concerns with respect to L.G.'s ability to maintain appropriate housekeeping standards for herself and the baby. Family support services were provided. L.G. was requested to make a referral to mental health and addiction services. Unfortunately, she did not follow through by consistently attending appointments with her mental health counsellor. Cleanliness of the home was also inconsistent such that unfit living conditions remained an issue at the end of the Lunenburg agency's involvement when they referred the file back to the Truro agency.

[175] Following L.G.'s return to Truro, additional services were put in place in accordance with the recommendations of the assessment submitted by Ms. Bower-

Jacquard, including individual therapy as well as a psychiatric assessment. Additional and more intensive family support services were arranged.

[176] While the respondent appeared to make some progress after she commenced taking prescription medication there were continuing concerns regarding her parental skills and her ability to maintain adequate housekeeping standards.

[177] When the Truro agency decided to move towards a less intrusive intervention by way of a supervisory order, a planned progression was put in place, involving increased periods of supervised parenting intended to allow the respondent the opportunity to demonstrate her ability to maintain and provide adequate parenting.

[178] The progression was not successful. There were continuing concerns with respect to L.G.'s ability to maintain the cleanliness of her apartment to provide a safe and appropriate home environment for the child. The respondent was not able to demonstrate the necessary commitment, or ability, to maintaining an appropriate housecleaning routine consistently. Concern with respect to inconsistent housekeeping or unfit living conditions continued even after the agency advised the respondent of the decision not to progress to a supervisory order.

[179] On September 1, 2017, L.G. advised the family support worker that she was in the process of undertaking a deep clean to her apartment. When the family support worker contacted the access facilitator to confirm this, the access facilitator reported that she had observed a lot of dirt on the apartment floor, there were many fruit flies present and the burners of the stove were caked with old food. On September 6 the family support worker observed that the living area in the apartment was tidy. However, on September 15 the condition of the apartment had once again deteriorated. On September 19 Ms. McDonald attended at the apartment and found that the apartment was again messy.

[180] The evidence supports and justifies the conclusion that the respondent is unable as a parent to maintain adequate housekeeping standards on a consistent basis. Accordingly, there is a continuing and obvious risk that unfit living conditions will expose the child to substantial risk of physical harm if the child is placed in the day-to-day care of L.G..

Conclusion Regarding Need of Protective Services

[181] I therefore find that the evidence supports and justifies the conclusion that the child remains in need of protective services pursuant to section 22 (2) subparagraphs (b) (g) and (ja) of the *Children and Family Services Act*.

Outside Limit

[182] The outside limit for disposition orders in this proceeding was February 2, 2018.

[183] Case authorities clearly establish that if a child is still in need of protective services at the outside limit the matter cannot be dismissed and the court has no jurisdiction to order either supervision or temporary care and custody.

[184] In Nova Scotia (Community Services) v. R. F., 2012 NSSC 125, Justice Jollimore determined the Minister's application for permanent care and custody. Justice Jollimore indicated as follows commencing at paragraph 165 of her decision:

[165] According to Justice Saunders in *Children's Aid Society of Halifax v. B.(T.)*, 2001 NSCA 99 at paragraph 19, I'm to consider each of the possible dispositions in section 46(5) and, by virtue of section 46(5)(c), section 42(1). His Lordship's reasons limit my considerations. At paragraph 23, he explained:

As the proceeding nears a conclusion, the opportunity to grant disposition orders under s. 42(1) (c) diminishes until the maximum time is reached at which point the court is left with only two choices: one or the other of the two "terminal orders". That is to say, either a dismissal order pursuant to s. 42(1) (a) or an order for permanent care and custody pursuant to s. 42(1) (f).

[166] This proceeding is nearing its conclusion: the deadline for a final disposition is April 7, 2012. As a result, the only two options available for my consideration are dismissing the Minister's application or placing C in the Agency's permanent care and custody.

[185] Justice Saunders also offer the following comments in T.B. v. Children's Aid Society of Halifax, 2001 NSCA 99, at paragraph 26:

[26] At the end of the time limits, once the agency establishes that the child remains in need of protective services, and subject to the court's authority to

extend time in the rare circumstances I've described in paragraph 56 *infra.*, The determination for the court becomes one of what final or terminal order is in the child's best interests....

Best Interests

[186] The legislation confirms that the best interests of the child is the paramount consideration in determining this application.

[187] In determining best interests I have considered the applicable circumstances as referred to in section 3 (2) in light of the evidence presented.

[188] I make the following findings with respect to applicable circumstances as referred to in section 3 (2);

- I find that it would be in F.'s best interests that he have the opportunity for development of a positive relationship with a parent or guardian as a member of a family in accordance with the Minister's current plan of care, which is premised upon adoption placement.
- I acknowledge the positive relationship between F. and his maternal grandmother and request that the Minister consider appropriate means of maintaining that relationship.
- The evidence supports and justifies the conclusion that the respondent is unable to adequately attend to the child's physical, mental and emotional needs or provide appropriate care to meet those needs on a consistent basis. The child requires a safe and secure home environment where his physical, mental and emotional needs will be adequately met on a consistent basis. Unfortunately, the respondent is not able to provide such a home environment.
- The evidence indicates and confirms that the respondent, L.G., does not have an adequate appreciation or understanding of the child's physical, mental and emotional level of development.
- I am satisfied that the Minister's plan of care has more merit than the plan of the respondent whereby she would resume responsibility for the day-to-day care of the child. The court finds that the mother's plan would expose the child to obvious and substantial risk of physical and emotional harm. The evidence also indicates that the respondent mother's plans are subject to

frequent change or revision. Her plans often appear to be last-minute, unrealistic and not well thought out.

- The evidence supports and justifies the conclusion that the potential risk to the child through being returned to the care of the respondent are clearly significant and exceed any risks associated with an order for permanent care and custody.
- The degree of risk that justified the finding that the child was in need of protective services was substantial based upon the history of agency involvement.

Credibility

[189] In assessing credibility I am mindful of the comments of Justice Forgeron in Baker-Warren v. Denault, 2009 NSSC 59 as well as the decision of Justice Warner in Novak Estate (Re), 2008 NSSC 283.

[190] In Re: Novak Estate, supra, Justice Warner stated as follows at paragraph 37:

There is no principle of law that requires a trier of fact to believe or disbelieve a witness's testimony in its entirety. On the contrary, a trier may believe none, part or all of the witnesses evidence, and may attach different weight to different parts of the witnesses evidence. (See *R. v. D.R.*, [1966] 2 S.C.R. 291 at 93 and *R. v. J.H.* supra).

[191] With respect to the witnesses who testified on behalf of the Minister, I find that both Ms. McDonald and Ms. Francis testified in an honest and straightforward manner. They both appeared willing to concede positive progress on the part of the respondent mother while explaining the basis for their continuing concerns respecting her ability to provide adequate parenting. Both witnesses were responsive to questions during cross-examination and neither were argumentative or evasive.

[192] Similarly, I have no reservations with respect to the credibility of Edith Verheuvél,

[193] I do have significant credibility concerns with respect to the testimony of L.G.. While the respondent was responsive to most questions, her testimony was at times inconsistent, at odds with the testimony of other witnesses and self-serving.

[194] The court does accept without reservation that L.G. loves her child and that she and the child have a close and positive relationship.

[195] Credibility concerns were raised by referral sources from the outset of agency involvement. Family members, the child's biological father, and the respondent's ex-boyfriend all expressed concerns about the truthfulness of the respondent. The maternal grandmother repeatedly expressed concerns about her daughter's truthfulness during her ongoing contact with the agency. Concern respecting the respondent's honesty with agency workers was a continuing theme throughout the involvement of both the Lunenburg and Colchester County agencies. This history does not in and of itself justify an adverse credibility finding.

[196] The following is a listing of incidents or situations in which the respondent was dishonest or untruthful. It is not an exhaustive list;

- In February 2016 L.G. advised the Lunenburg agency that her mental health and addictions services counsellor had recommended that counselling sessions end. When the agency checked with the counsellor he advised that he had not made such a recommendation but had explained to L.G. that it was up to her to keep coming to their sessions to work on anxiety.
- In March 2016 L.G.'s boyfriend reported that she was sleeping with F. in her bed. He reported witnessing L.G. elbow and slap the child in the head while they were sleeping and that she had accidentally kicked him. L.G. initially denied that she was sleeping in the same bed as the child but on March 31 admitted that this was occurring.
- In April 2016 L.G.'s boyfriend advised that L.G. was sleeping in the bed with the child F. and that the child had fallen out of bed. L.G. initially denied the allegation and then subsequently admitted that it had happened.
- In July 2017 workers expressed concern to the respondent about whether or not she was being honest with the agency. It was explained on July 5, 2017 by Ms. McDonald that they would be unable to transition F. back to her care unless she was being honest and upfront. The respondent said she understood and agreed that she had been slacking off. She did not disclose that she was not taking her medication as prescribed.
- On August 12, 2017 the family support worker questioned L.G. specifically about her prescription medication and encouraged her to get a

refill on one of her prescriptions. L.G. did not admit that she had not been taking her medication as prescribed.

- On August 13, 2017 the family support worker continued the discussion about prescription medication. At trial L.G. admitted that she lied to the worker when she indicated that she'd gone to the pharmacy and the prescription was not ready. L.G. suggested that this was the only time she lied about her medication. On August 13 L.G. specifically denied to the family support worker missing her medication for more than a day. (L.G.'s affidavit confirms that throughout July and August she did not consistently take her medication.)
- On August 14 the respondent was asked about her medication and admitted that she been untruthful during the conversation on August 12 and could not explain why she had lied and stated that she had the money to pay for the prescription. (At trial the respondent maintained that she had never said that she had the money to pay for the prescription.)

[197] The following are examples of inconsistencies or contradictions in the respondent's testimony:

- During her cross-examination the respondent contradicted herself in discussing missed appointments with Edith Verheuvél. Her initial explanation was that the appointments were missed due to conflicting appointments and illness. Subsequently the respondent changed her explanation and indicated that they cancellations were not due to appointments but illness. Later in her cross-examination she admitted that she had not cancelled all appointments due to illness and might have forgotten about one or two.
- At another point during her cross-examination L.G. denied that she'd ever said that she had "slacked off". She was then referred to Ms. Verheuvél's report of September 20, 2017 and the quote Ms. Verheuvél attributed to the respondent at page 2 of her report "when I was told that F. was coming home, I got a little overconfident so I slacked off a bit in keeping the apartment clean and tidy...". Even after being referred to the quote L.G. maintained that she had not made that statement.

- At one point during her cross-examination the respondent was asked what she would do when her therapy with Ms. Verheuveel was ended. The respondent testified that she had another worker who she had previously seen at Truro Hospital. While indicating that she had not yet seen this person she indicated that it would be easy for her to do so when she is finished with Ms. Verheuveel. She was then asked if she had contacted that person and she indicated that she had actually called her. She then contradicted herself when asked when was the last time she had contact with her and she responded that it was shortly before she moved back to Truro. When asked who this individual works for she indicated that she works for mental health at the hospital. She was then asked if this individual still works at Truro Hospital and she indicated she doesn't know if she still does.

[198] The court finds that the respondent's use of the word "isolated" in describing what happened during the months of July and August 2017 to be inaccurate and self-serving. Agency concerns with respect to cleanliness were certainly not isolated but rather a continuing focus of agency workers due to the respondent's inability to consistently maintain adequate housekeeping standards. Similarly concerns with respect to whether or not she was using her medication appropriately were not isolated but ongoing throughout July and August.

[199] The respondent's use of the phrase "slip up" in relation to her non use of prescription medication is also concerning. Her own affidavit at paragraph 26 again indicates that throughout the month of July and August 2017 she did not consistently take her medication. When asked what happened she testified that she missed a day, and then another day, and just absentmindedly didn't take her medication. The court is satisfied that what actually occurred cannot be described as a "slip up". The evidence confirms more than a momentary lapse in judgment or absent mindedness. The failure to take medication as prescribed was ongoing over an extended time frame and continued despite the repeated inquiries from workers regarding her medication usage.

[200] Based upon a careful and considerate review of the evidence, I have significant reservations with respect to the respondent's credibility and the reliability of much of the respondent's testimony.

[201] In any instance where the evidence of the respondent conflicts with the evidence of Ms. McDonald, Ms. Francis or Ms. Verheuveel I find the evidence of these witnesses to be more reliable than that of the respondent.

Consideration of Section 42(2)

[202] Based upon the evidence I am satisfied that less intrusive alternatives including services to promote the integrity of the family were offered during the course of the protection proceeding in accordance with section 13. The services included individual therapy and intensive family support services over a prolonged period of time. The agencies also arranged for completion of a psychological assessment as well as a psychiatric assessment. A progression to a less intrusive form of order was unsuccessfully attempted in July and August 2017. Despite the services offered the respondent was not able to adequately address the protection issues. The child remained in need of protective services as of the outside limit for the preceding, namely February 2, 2018.

Considerations of Section 42(3)

[203] The evidence supports and justifies the conclusion that it is not possible to place the child with a relative, neighbour or other member of the child's community or extended family with the consent of the relative or other person.

[204] The respondent did not present any alternative plan based upon placement with a relative or member of her extended family or member of the community at trial.

[205] The court acknowledges that the affidavit evidence indicates that when the respondent was advised of the Minister's decision to seek permanent care and custody she initially informally suggested a number of placement options as an alternative to permanent care and custody. The agency considered the respondent's proposals. None were determined to be appropriate.

[206] L.G. suggested her current boyfriend M.V. as a possible placement option. M.V. subsequently indicated to the agency that he did not see himself as an adequate plan. M.V. was present throughout the trial. His attendance was explained as being a support for the respondent. He was not called as a witness.

[207] The respondent did not put forward a plan premised upon placement with her mother. While the respondent referred to her mother as one of her key supports her mother did not testify at trial.

[208] Accordingly, prior to trial a number of placement options were suggested and considered. The proposals that were forthcoming did not appear to be well thought, planned or reality based.

Consideration of Section 42(4)

[209] The outside limit for this case expired February 2, 2018 and therefore a finding under section 42 (4) is not appropriate or required.

Consideration of Section 46

[210] The Minister's request for an order for permanent care and custody is made pursuant to section 46 of the *Children and Family Services Act*. I am mindful of subsection 4 of section 46. I make the following findings:

- There has been a negative change in circumstance since the original disposition order in so far as the respondent has not been able to address the Minister's protection concerns despite the services offered and the opportunity afforded her.
- The original plan of care was not successfully carried out. While the respondent was generally cooperative throughout the proceeding, and did participate in services and assessments as requested by the Minister, the respondent unfortunately was not able to address or resolve the Minister's protection concerns.
- The evidence confirms that the least intrusive alternative consistent with the best interests of the child at this point in the proceeding, and adequate to ensure the safety and welfare of the child, would be an order for permanent care and custody.
- This is not a case where the court can consider making a further order for temporary care and custody because the applicable maximum time period has expired.

Access

[211] The agency's plan is premised upon adoption. The evidence presented on behalf of the Minister, the affidavit of Ms. Simpson sworn December 21, 2017 admitted by consent, indicates that an order for access will impact negatively upon

the potential for successful adoption placement. No evidence to the contrary was presented on behalf of the respondent.

[212] There is no evidence establishing or indicating any special circumstances that would justify or support an order for access post permanent care and custody. I would confirm therefore the order for permanent care and custody will not include any provision for access in favour of the respondent.

Section 50 – Religion

[213] No evidence was offered with respect to the religious denomination of the child. The religious denomination of the child is therefore noted as undetermined.

Conclusion

[214] I find the minister has adequately discharged the burden of proof in this case.

[215] The Minister's application for an order for permanent care and custody is granted.

[216] I thank counsel for their cooperation and assistance.

S. Raymond Morse, JFC