Citation: *In the matter of J.L. Jr.*, 2011 YKTC 61

Date: 20110107
Docket: 10-T0006
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Cozens

IN THE MATTER OF THE *CHILD AND FAMILY SERVICES ACT*,
R.S.Y. 2008, c. 1, and J.L. Jr.

Appearances:

Tara Grandy — Counsel for the Director
Kim Hawkins — Counsel for the mother, C.P.

REASONS FOR JUDGMENT

[1] COZENS T.C.J. (Oral): This is an application by the Director for the granting of a six month temporary custody order regarding J.L. Jr., date of birth November 8, 2006 ("J."). The application is brought pursuant to s. 57(3)(c) of the *Child and Family Services Act* ("the *Act*"). The Director states as the basis for the application that J. Jr. is, or is likely to be, physically harmed by C.P. and J. Jr. is, or is likely to be, emotionally harmed by the conduct of C.P.

[2] Counsel for the mother, C.P., has brought application for an order that Ms. P. be granted specified access to J. I note that Ms. P. is also opposed to the Director's application and seeks that J. be returned to her care. Alternatively, she takes the position that the temporary custody order, if granted, should be less than six months.

[3] J.L., who is the father of J., has previously been found by this Court not to be a concerned parent within the meaning of the *Act*.

[4] The hearing of the applications occurred over five days, commencing on December 6, 2010, and concluding December 16, 2010. I reserved judgment until today's date. This is my judgment.

Evidence for the Director

[5] At the hearing, I had before me the affidavit evidence of Family and Children's Services workers Jacqueline Clune, Doreen Pardy, Belinda Poyntz, Alla Blysak and Brenda Jenner. With the exception of Ms. Jenner, these workers testified at the hearing. Foster parent, S.L., also testified at the hearing.

[6] An Agreed Statement of Facts regarding the evidence of psychiatrist, Dr. Armando Heredia, was provided. Attached to this Agreed Statement of Facts was a psychiatric evaluation of Ms. P. by Dr. Heredia, as well as an assessment conducted by the East Coast Forensic Psychiatric Hospital as a result of an assessment order made May 13, 2010, pursuant to s. 672.12(3) of the *Criminal Code of Canada*.

Evidence for Ms. P.

[7] I had before me the affidavit evidence of Ms. P., Leslie Robert, Program Coordinator for the Second Opinion Society, and Bonnie Bingham, Prenatal Nutrition Outreach Program Coordinator at Skookum Jim Friendship Centre. Ms. P. and Ms. Robert also testified at the hearing, as did Viola Papequash, Justice Worker for the Kwanlin Dun First Nation.

Assessment of the Evidence

[8] I find the evidence of the Director's witnesses to be credible and reliable, whether as set out in the affidavit evidence or in testimony during the hearing. I find the evidence of Ms. Robert and Ms. Papequash also to be credible and reliable, as well as that of Ms. Bingham, as her evidence was not challenged and is not necessarily inconsistent with any other evidence. I find the testimony of Ms. P. to have been well presented, and at times persuasive. She conducted herself appropriately in the courtroom, whether testifying or observing. However, where Ms. P.'s testimony contradicts or is inconsistent with the evidence of the Director as to what occurred during certain access visits or meetings I prefer the evidence of the Director. I find that Ms. P.'s recollection of events is likely not full or complete. I am not saying that this is as a result of any deliberate attempt by her to present inaccurate information to the Court to better enhance her case. I believe that her struggles with her mental health issues and the stressful situation she has been in for much of the timeframe she testified to has affected her recall of events, or her perception of events, as they occurred.

History of events

[9] I do not propose to review the evidence in any great detail in this decision. The evidence is extensive, both with respect to historical and more recent events. Relatively briefly, Ms. P. has just turned 27 years old. Besides J., she has three children. They are twin girls born January 2, 2001, and a daughter born December 9, 2001. The three daughters were all removed from Ms. P.'s care as infants and are currently in the care of extended family members residing outside of Whitehorse. Ms. P. sees them one to

three times a year in Whitehorse. I heard uncontradicted evidence that her twin daughters were sexually abused when in the care of a relative.

[10] J. has lived with Ms. P. from the time of his birth until he was apprehended by the Director on April 19, 2010. Prior to April 19, 2010, Family and Children's Services had, at times, been extensively involved with Ms. P. and J. due to concerns that arose when Ms. P. was pregnant with J. This involvement began from J.'s birth with the development of a case plan to provide Ms. P. and J.L. an opportunity to parent J.

[11] The status of the file changed in October of 2007 from a child protection file to a family service file to reflect the progress made by Ms. P. A decision was made to close the family service file in February 2008. There were no child protection concerns observed during this period. The file was re-opened in July of 2009 as a family service file after concerns were reported by Ms. P.'s Healthy Families worker. These concerns related to Ms. P.'s parenting techniques and, in the Healthy Families worker's opinion, certain reactions and escalating behaviours of Ms. P. In March 2010, the file was changed to a child protection file due to the family circumstances. These circumstances included Ms. P.'s apparent disengagement from the various support services she was involved with and apparent disorganized thinking.

[12] The apprehension of J. on April 19, 2010, occurred as a result of police officers contacting Family and Children's Services after they had attended Ms. P.'s residence in response to complaints about a crying and screaming child. When Family Services workers attended Ms. P.'s residence, they considered that the condition within the residence constituted a safety risk for J. As a result, J. was taken by the Family

Services workers to a foster home. In the opinion of the Family Services workers, at that time J. did not show any signs of stress or upset by these events.

[13] On April 22, 2010, an incident occurred. Ms. P. took J. from the family support worker building and ran towards 2nd Avenue with him in her arms. J.'s pants were down to his knees and his diaper partially off. He had no jacket or shoes on. Ms. P. was yelling that J. had been raped and violated. She approached a woman and asked her to witness this, holding J. up towards the woman while spreading the cheeks of his buttocks. Ms. P. was telling the woman that J. had a dark ring around his asshole and he smelled of shit. Ms. P. continued to shout that J. had been sodomized and so forth after Ms. Pardy caught up to her and J. This shouting was to both Ms. Pardy and several civilians who passed by. Ms. Pardy was ultimately able to have Ms. P. and J. attend the Family and Children's Services building. Once inside, the situation again escalated with Ms. P. loudly repeating her statements about J. having been violated. Eventually, J. was taken to the Whitehorse General Hospital with the assistance of the RCMP.

[14] The Director brought an application for a three-month temporary care and custody order at the court appearance on April 26, 2010. The application was adjourned until April 29th with J. remaining in the interim care and custody of the Director until further order of the Court.

[15] On April 27, 2010, Ms. P. attended at the foster parent, Ms. L.'s, residence, and lifted J. over the fence and ran away with him. Ms. P. threw a large rock at Ms. L. Ms. P. and J. were located and apprehended by the RCMP within the hour and

Ms. P. was charged with assault and abduction. As a result of the criminal charges, Ms. P. was sent for a forensic assessment to the East Coast Forensic Psychiatric Hospital. Ms. P. was admitted for assessment on May 13, 2010, and a report dated June 18, 2010 prepared.

[16] The report concluded that Ms. P. was suffering from a major mental disorder on April 27, 2010, when she took J. from Ms. L.'s residence. The assessment noted that Ms. P.'s symptoms of psychosis appeared to be largely resolved at the time the report was prepared, and further stated that Ms. P. was willing to be treated with anti-psychotic medications to reduce the possibility of psychotic relapse.

[17] Her current psychiatric diagnosis was that of Brief Psychotic Disorder with Marked Stressors (by history) with her not exhibiting any symptoms of psychosis at the time of the preparation of the report. She was noted to have significant personality traits (specifically prominent histrionic, narcissistic, and to a lesser extent, possible schizotypal personality traits). I note from this report and other documentation filed that Ms. P. has a long history related to her mental health issues. She has previously been diagnosed as suffering from a disorganized sub-type of schizophrenia, as well as oppositional defiance disorder. She has been previously admitted on at least two occasions as a patient in the psychiatric units, with the first occasion being when she was 15 years old. Prior to the assessment in May 2010, Ms. P. had not been admitted to a psychiatric unit since 2002, although mental health concerns continued to exist.

[18] Dr. Heredia, Ms. P.'s current psychiatrist, prepared an initial assessment dated May 3, 2010. In this assessment, he concluded that Ms. P. was suffering from a major

mental disorder with a clinical presentation consistent with past exacerbations of schizophrenia, with the current, predominant symptoms being non-bizarre delusions without reported hallucinations. He also noted the possibility of the existence of a delusional disorder. Between June and December 2010, Dr. Heredia saw Ms. P. on two occasions in September and November for clinical sessions, and once in October at the Whitehorse General Hospital.

[19] Dr. Heredia disagrees with the East Coast Forensic Psychiatric Hospital assessment, finding that Ms. P. suffers from a brief psychotic disorder. It is his opinion that she suffers from schizophrenia with a paranoid subtype. Her symptoms include non-bizarre delusions and disorganized thinking. Stress, real or imagined, will likely affect Ms. P.'s mental condition. It is his opinion that she will suffer from schizophrenia for the rest of her life, although her symptoms can be mitigated by taking sufficient medication. Without sufficient medication, Ms. P.'s condition will deteriorate, while with treatment, she can maintain long periods of stability. He believes that Ms. P. was not taking sufficient medication to mitigate her schizophrenic symptoms and behaviours, although he concurrently stated that she was not, at the time of the preparation of the Agreed Statement of Facts, a risk to herself or others.

[20] Dr. Heredia's recommendations include a change to or increase of Ms. P.'s medication, attendance with mental health nurses to gain insight into her mental health condition, and monthly attendance with him. Of considerable relevance to the applications before me is his recommendation that there be no access between Ms. P. and J. until her mental health stabilizes. Stabilization would be indicated by a decrease in Ms. P.'s pre-occupation with delusional thoughts.

[21] Since Ms. P.'s return to Whitehorse in June 2010, she was able to have access visits with J. These visits progressed from short and focused to lengthier visits. There was a concern that caused the July 13th visit to be cancelled and further visits to be put on hold until after a cooperative planning meeting took place on July 22nd. On July 13th, Ms. Pardy and Ms. Poyntz went with J. to Ms. P.'s residence to pick her up for an access visit. As she was getting into the car, Ms. P. saw marks on J. and was told he had impetigo for which he had been prescribed cream. Ms. P. became upset and as a result of her escalating behaviour and anger the access visit was cancelled. Ms. Clune testified that the Director's concern was the risk of emotional harm to J. from being exposed to this incident. The Director does not dispute that Ms. P. had a right to be initially concerned; the problem is with how Ms. P. handled the situation.

[22] Visits resumed after the July 22nd meeting and were further increased on August 9, 2010. As a result of concerns arising out of an August 31st access visit, an intention to progress the community visits was put on hold and the structure of access visits was changed to ensure the safety of all participants. Further concerns arose as a result of the October 5th and 14th access visits, and after the October 14th visit, access was cut off. There has been no access since that date, either in person or by telephone.

[23] On October 22, 2010, Ms. P. was admitted to Whitehorse General Hospital after being picked up by the RCMP after being observed running down the street saying she was running away from a man who was following her. Ms. Clune states that Joy Hall, the mental health nurse who has been working with Ms. P., advised her on that day that it was her opinion that Ms. P. was not stable, she was presenting as delusional and

easily overwhelmed, and there was a possibility of further deterioration before stabilization. Ms. Hall felt that Ms. P. needed to be assessed to determine the appropriate medication and her current medication needed to be reviewed.

Analysis

[24] Some of the Director's concerns are as follows: Ms. P. is not taking her medications, or to the extent that she is, the dose she is taking is insufficient. According to the Director's evidence, when Ms. P. was discharged from the East Coast Forensic Psychiatric Hospital, she was originally treated on June 17, 2010 with 200 milligrams of Seroquel XR, which is an anti-psychotic type of medication with independent mood stabilizing and anti-depressant qualities. Due to excessive sedation, this dosage was reduced to 50 milligrams of Seroquel on June 18, 2010. I note that Ms. P. testified she was originally prescribed 500 milligrams of Seroquel, which was subsequently reduced to 250 milligrams, and then to 50 milligrams at the time she left the East Coast Forensic Psychiatric Hospital. She believes when she was discharged from the Whitehorse General Hospital she was prescribed 75 milligrams and she testified that the amount is now 25 milligrams.

[25] I prefer the Director's evidence as to what Ms. P. was treated with at the East Coast Forensic Psychiatric Hospital, although it is possible that, through attendance with another physician, she is now only prescribed 25 milligrams.

[26] Dr. Heredia states that Ms. P.'s current dosage of Seroquel is insufficient and he wants to increase the dosage to at least 300 milligrams. Ms. P. is resistant to this increase in her dosage.

[27] A second concern is that Ms. P. has unrealistic expectations of J. and lacks understanding of his developmental milestones.

[28] Third, upon apprehension, J. was hyperactive, easily distracted, not toilet trained, had delayed language, sensory needs, and would bang into people, stuff food into his mouth, lacked independent skills such as brushing teeth, and had unpredictable sleep patterns. He has improved considerably in most of these areas since he came into care.

[29] Four, Ms. P. puts her own needs before J. and needs him to meet her needs. Five, she misses J.'s cues. Six, she is capable of rapidly escalating in behaviour, her behaviour is changing and unpredictable and seven, she maintains a belief that J. has been sexually abused and has raised this issue on several occasions, not only in front of him and others, but also has physically involved J. in her attempts to show others proof of the sexual abuse.

[30] Ms. P. is noted to have some of the following strengths: She loves J.; she has worked hard; and she is involved with community supports, although Ms. Clune states that there is no evidence that the supports have helped to regulate Ms. P.'s behaviour. Ms. P. has worked hard at Challenge. Ms. Pardy testified that after J. was apprehended, Ms. P. took significant steps to properly arrange her apartment and showed a willingness to deal with the Director's concerns.

[31] There were also a number of observations made of J., as follows: Ms. L. stated that J. was lots of fun, had a wonderful imagination, was a happy child, and was always happy to see Mom. Ms. Pardy testified that J. was a delightful little guy, active,

healthy, inquisitive, and was well nourished and noted to be in good physical condition by Dr. Zimmerman on April 27, 2010. Dr. MacDonald also observed him to be a delightful little boy. With respect to the developmental issues regarding J., I note that a cognitive assessment is scheduled for J. in January of 2011.

Observations regarding Ms. P.

[32] The history of Ms. P. is a relevant consideration when assessing the current situation and her ability to safely parent J. The history, however, is not determinative, and it must be remembered that, with full knowledge of this history, the Director closed its file at one point and allowed Ms. P. to raise J. without any direct intervention. I presume that the decision of the Director at that time was based upon an assessment that, notwithstanding Ms. P.'s history, she was, at that point in time, able to provide J. a safe environment. Therefore, while Ms. P.'s history is clearly relevant, the impact of this history on current events must be carefully assessed and not given undue weight.

[33] Ms. P. appears to function well within limits. When she is outside of these limits, she appears to deteriorate. Her mental health condition is a significant factor in determining her limits. When she is stable, the limits expand and, conversely, when she is unstable, the limits retract. I have no difficulty finding that Ms. P. has presented on many occasions as hostile, confrontational, and verbally abusive when dealing with the Director. I also find that Ms. P. has, on several occasions during access visits, conducted herself inappropriately in the presence of J., both in respect of comments made regarding possible sexual and physical abuse, and in the physical handling of J., such as spreading the cheeks of his buttocks. I note that there is no evidence before

me to indicate that J. has ever experienced sexual or physical abuse, and to the extent Ms. P. believes that he has, it would appear she is wrong.

[34] I find on the evidence before me that the Director has handled such situations appropriately. Included in this finding is that the termination and restrictions on access that were imposed at times by the Director were appropriate, leaving aside for the moment the issue of the cessation of access since October 14, 2010. I recognize in making this finding, however, that Ms. P. is dealing with an obviously stressful situation with inherent limitations, including her mental health. I can understand why, at times, she may feel that the Director is conspiring to separate her and J. I appreciate that the use of the word "conspire" likely refers to a feeling that what Ms. P. perceives as the system, with all its resources, has allied against her. As Ruddy J. stated in *M.N. (Re),* 2005 YKTC 27, in paragraph 23, an apparent unwillingness to address child protection concerns could stem from an inherent distrust of what an individual is being asked to do.

[35] Ms. P. does not have the power or resources that the Director does. This imbalance can lead to frustrations and a lack of progress. I can assure Ms. P. that no such conspiracy exists. The Director is simply acting in a manner consistent with their mandate to protect J. from harm. As Ruddy J. stated in paragraph 27 of *M.N.(Re), supra*, in such cases:

> … the Director has a higher onus to ensure that frustrations do not prevent forward movement.

[36] I can also understand to some extent why Ms. P., at times, reacts negatively to the Director as she does. Dr. Heredia made it clear that stress can exacerbate Ms. P.'s struggles with her mental health. Her ability to temper her reactions is likely affected by the stressful nature of the situation she finds herself in. The Director, as is all too commonly the case, is a natural target for these negative reactions being that the Director embodies a large and powerful system in Ms. P.'s mind. Although such negative reactions are understandable, that does not mean that they are fair.

[37] While I say I have some understanding of Ms. P.'s behaviours, it is important that she accept that the Director is attempting to act in accordance with what is best for J. The Director is not her or J.'s enemy. The Director is not attempting, at least at this point in time, to permanently, or for the long-term, prevent Ms. P. from parenting J. To the contrary, the evidence of the Director would suggest that the current plan is to continue to attempt to work towards reunification.

[38] I have before me an application for a temporary custody order. No one has disputed that there remains a potential, perhaps even a presumption, of reunification underlying this proceeding. That is not to say that the Director has determined that reunification will occur. I note that in Ms. Clune's evidence that at one point the possibility of alternate family placements was a leading consideration. Reunification with Ms. P., however, still appears to be a viable goal in the mind of the Director. Ms. P., if she wishes to be provided the opportunity to parent J., needs to work with the Director and the mental health professionals and the community support she has access to.

Findings on the issue of harm

Physical harm

[39] Physical harm is not defined in the *Act*. I concur with what the British Columbia Court of Appeal stated in *B.S.* v. *British Columbia (Director of Child, Family and Community Services)*, [1998] B.C.J. No. 1085 CA at paragraph 111. The harm contemplated must be significant harm in that it is harm that is more than trifling or transitory in nature, and is sufficient to warrant government intervention, rather than government assistance.

[40] I am not persuaded by the evidence that J. has suffered any physical harm as a result of the actions of Ms. P., nor that he is likely to be physically harmed by her. The scratches he suffered on April 27th do not meet the threshold of physical harm as intended by the *Act*, nor does the observation of Ms. Pardy that Ms. P. was holding J. very tightly on one occasion, or the several times when Ms. P. spread the cheeks of J.'s buttocks. There is no medical evidence that supports the position that J. suffered any physical harm as a result of Ms. P.'s actions. I am not satisfied that the evidence is capable of establishing that Ms. P.'s actions were responsible for causing J. to be developmentally delayed. While there is credible evidence that J. has made considerable developmental progress while in care, this evidence, as presented, cannot entirely establish, with the certainty required, that Ms. P.'s actions while parenting him significantly harmed his development.

[41] The most significant basis for a legitimate concern regarding Ms. P.'s actions being likely to cause J. to suffer physical harm arise from the evidence that Ms. P.'s

home contained a considerable amount of mouldy food at the time J. was apprehended, in conjunction with the evidence that J. brought mouldy food to the daycare. As per *B.S.*, however, inadequate diet or hygiene does not meet the threshold of constituting significant harm. I do not want to be construed as saying that that could never be the case. Certainly, some circumstances may be so exceptional that diet or hygiene may constitute significant harm. At this time, however, I am satisfied that the potential for Ms. P. to feed J. mouldy food has been substantially decreased. In finding this, I note the various supports available to Ms. P. and my acceptance of her evidence that she will accept assistance from these supports. I am not satisfied that J. leaving the residence through a window and/or door on April 9th and 10th in 2010, and possibly ingesting some medicine, in conjunction with other evidence that alludes to a lack of close supervision of J. by Ms. P., has crossed the threshold for establishing that there is a likelihood that Ms. P.'s actions will cause J. to suffer physical harm or that he did suffer physical harm.

[42] Certainly there are risks associated with raising children and it is not uncommon for children to stray beyond safe boundaries. Not all such cases, however, are indicative of a lack of supervision that then requires the Director to take child protection steps. Each case needs to be assessed on its own merits. I am aware, however, that the apparent lack of supervision at these times remains a factor in considering the remainder of the evidence in this case. I am aware that I do not need to wait until actual harm to J. occurs before finding that he is in need of protective intervention, and that a substantial risk of harm is sufficient to warrant an order for protection. (See *Children's Aid Society of Halifax* v. *C.V.*, 2005 NSCA 87, at paragraph 18). In these

circumstances, however, I am not satisfied that the evidence supports a finding that J. is in need of protection under s. 21(a) of the *Act*.

Emotional harm

[43] Section 21(3) states as follows:

> For the purposes of paragraphs (1)(c) and (f), but without limiting the meaning of "emotionally harmed", a child has been, or is likely to be, emotionally harmed by the conduct of a parent … if the parent … demonstrates a pattern of behaviour that is detrimental to the child's emotional or psychological well-being.

[44] Now, the evidence does not establish that J. has suffered actual emotional harm from the actions of Ms. P. as required by the *Act*. The evidence before me is the detachment or withdrawal J. appeared to undergo at times when Ms. P. was upset and angry, and his resistance to certain of her actions, including attending in the bathroom with her. While I do not doubt that J. did detach himself and withdraw on the occasions testified to or did resist Ms. P.'s actions involving him at times, that does not establish that he has suffered actual emotional harm. I have no assessment or report before me to indicate that J. has suffered emotional harm.

[45] I find, however, that Ms. P.'s actions do pose a risk of likely emotional harm to J. if these actions continue. My concerns in this regard arise from the credible evidence regarding Ms. P.'s obsession that J. has been physically or sexually abused while in the care of the Director. Raising these concerns verbally in J.'s presence is potentially harmful. Physically involving J. by running into the street with him, as occurred on April 22nd, or spreading the cheeks of his buttocks to look for signs of sexual abuse, is potentially harmful. Ms. P. has clearly demonstrated a pattern of conduct prior to the

date of the commencement of this hearing that I find is detrimental to J.'s emotional and psychological well-being. Taking into account what I have just stated and the other evidence before me, this pattern of conduct cannot continue.

[46] At present, I am satisfied that J. is in need of protective intervention pursuant to s. 21(1)(c) of the *Act,* and I am further satisfied that J. should be placed in the temporary care of the Director, pursuant to s. 57(3)(c) of the *Act*. J. has been in the care and/or custody of the Director for a considerable period of time. I have weighed and considered the amount of time that would be appropriate and, in these circumstances, with the work that I believe needs to be done, I am satisfied that the order should be for a period of six months from today's date.

Application for access

[47] I turn now to the issue of access. I am quite concerned about the effect upon J. with the complete cessation of access between J. and Ms. P. My concerns relate to the immediate and ongoing impact upon J. of a lack of access, as well as the potential impact upon J.'s status at the end of the six month temporary custody order.

[48] One issue that has not been addressed by the evidence is the potential for J. to suffer emotional harm due to the lengthy separation from Ms. P. It would seem that there is a potential for some emotional repercussion upon J. from this separation given the evidence I have heard about his generally positive interactions with his mother. The Director's policy manual, chapter 13, draft 10 at page 188, includes the following: "Importance of Family Contact" and I recognize that family contact includes more than the parent:

> Making and implementing arrangements for family contact can involve practical and emotional challenges for families, caregivers and workers. Understanding exactly why family contact is important for children and young people supports workers to maintain a focus on the child's needs in case planning and decision-making, when situations are complex and confusing.
>
> Research suggests that well-planned and positive family contact can benefit children by:
>
> ***assisting with family unification*** - there is a widely reported association between the frequency and reliability of family contact and children returning home or spending less time in placement
>
> ***maintaining/building attachment and connectedness*** with family and other significant people - these connections meeting their emotional needs for love, a sense of belonging, stability and continuity
>
> ***promoting child well-being and development*** - there is an established connection between parental contact and child well-being, self-esteem, and positive identity development

[49] The Director's position is that even supervised access visits cannot mitigate the risk of emotional harm to J. that will arise if Ms. P. makes references to having been sexually abused or his coming back to live with her. Also of concern to the Director is the potential for Ms. P. to attempt to physically remove J. during supervised access visits. Ms. Clune testified that the Director's hope is that through interaction with Ms. P. and mental health professionals, such as Dr. Heredia and Ms. Hall, the Director will be able to determine when Ms. P. is stabilized to the point that access visits can resume.

[50] I agree with the submission of defence counsel that it is important to separate out the challenges Ms. P. faces from child protection concerns. While the two overlap at points, it would appear on the evidence, and by the past actions of the Director, that Ms. P.'s mental health issues do not preclude her from parenting J., depending upon the extent to which these mental health issues have been stabilized.

[51] I accept Ms. P.'s evidence that she is willing to make reasonable efforts to cooperate with her community supports, mental health professionals and Family and Children's Services workers. This evidence is supported to some extent by the evidence of the Director. During her testimony, Ms. P. acknowledged that some of her actions were embarrassing to J. and could have upset him. She stated that he was probably baffled and flustered by her actions. She stated that, "I am more aware now of how easily he is affected." She further stated that if she was given a chance to reconnect visits and have access, she would be more sensitive and exercise better judgment. She also testified that she needs to remember that her pain is a separate issue that does not involve J. Ms. P. also acknowledged that her mental health issues can, at times, or to some degree, make it difficult to parent J. or to meet his needs.

[52] The evidence adduced shows that J. has a strong connection to Ms. P. He looks forward to his visits with her. Ms. Clune's affidavit states that:

> … the Director acknowledges the importance of regular and consistent access to both JJ (J.) and C., and is committed to working together to address the identified concerns to allow access visits to resume.

[53] I note that the most dramatic incidents involving J. occurred in April, shortly after J. was apprehended and when the stress upon Ms. P. would have been considerable and the time for her to process what had happened brief. That is not to minimize the seriousness of some of the later events. Although not as dramatic, they are nonetheless quite disturbing. While I appreciate the concerns regarding access raised by the Director, including Dr. Heredia's recommendations, as counsel for Ms. P. submits, the current situation is somewhat analogous to a stalemate.

[54] I find that the Director's position regarding the measurement of stabilization of Ms. P. is insufficiently clear as to the steps to be taken and the timeframe within which those steps will be taken. Stabilization may well be assisted by removing the stressful situation created by Ms. P. having no access at all to J.

[55] Speaking of stabilization, I have some concerns regarding the evidence of the medications that Ms. P. has been prescribed and is taking. I find that the evidence is somewhat unclear on this point as to exactly what is taking place. As medication seems to play a significant role in Ms. P.'s potential to stabilize, I believe this issue needs to be clearly addressed in the immediate future.

[56] There is considerable evidence that during many of the access visits, Ms. P. and J. interacted very positively and appropriately. J. was happy to see her and play with her and was sometimes sad or cried when she left. The table of visits attached to Ms. Blysak's affidavit, as further clarified during the hearing through cross-examination, clearly shows that most of the access visits were positive. Even some of those visits that were identified as negative were also noted to have been positive in part.

[57] The risk of harm to J. associated with resuming access visits is, in my opinion, not significant enough to prevent access visits from occurring. There are also risks associated with maintaining the status quo of no access visits. A balance must be struck.

[58] The Director has expressed a concern that they are unable to provide supervised access that would ensure a safe environment for J. I have more confidence in the Director. While I agree that there is no ability to ensure that Ms. P. will not

suddenly say something inappropriate in the presence of J., the Director maintains the ability to terminate the access visit, and potentially subsequent visits, should this occur. The risk of harm in such circumstances is minimal. Surely, given the history of this matter, the Director can arrange for the supervised access to take place in an environment where Ms. P. cannot simply walk out with J. This Court, when making orders for supervised access, assumes the Director has the ability to safely supervise such access.

[59] I find that the potential risks of harm associated with resuming access between J. and Ms. P. are significantly outweighed by the potential benefits.

[60] I find, however, that the access visits, should be introduced gradually. Should the visits be going well, then they should be increased. It is reasonable to expect that after almost three months without a visit, J. will need time to readjust to seeing Ms. P. Ms. Robert, in her testimony, as a support for Ms. P., concurred with the need for gradual supervised visits over time with the goal of reunification.

[61] Therefore, I am going to order that pursuant to s. 57(5) of the *Act*, Ms. P. be granted supervised access to J. for a minimum of one hour per week until further order of the Court. The first access visit will occur no later than January 16, 2011. This allows the Director sufficient time to plan for the visit. I will leave it to the Director to determine whether the one hour per week is made up by a long visit or by two or more shorter visits. This access will occur at such places and times as the Director considers appropriate.

[62] This access is subject to Ms. P. complying with conditions that she not speak to J., or in the presence of J., about any concern she may have regarding his having been physically or sexually abused. Ms. P. is not to accompany J. to the bathroom. Ms. P. is also not to speak to J. about the possibility of his returning to live with her. Common sense needs to be applied to the last point. If J. raises the issue, Ms. P. cannot ignore him. She must, however, deflect his attention away from the issue as quickly as is reasonably possible.

[63] I also order that Ms. P. participate in a Parenting Capacity Assessment. Her counsel has made submissions that Ms. P. is prepared to do so.

[64] Finally, subject to the availability of counsel, I am further ordering that the matter return before me on February 3rd at 10:00 a.m. for a review of access.

[65] Is there anything from counsel with respect to the decision?

[66] MS. HAWKINS: Your Honour, I simply have a question regarding the Parenting Capacity Assessment. There has been -- one of the issues which has arisen is who would be the appropriate assessor. There is an assessor that Ms. P. has put forward as a possibility and I understand from her last e-mail to me, which was just shortly before Christmas, she could potentially be available for January 24th or January 31st. The difficulty is that Ms. P. does not have -- does not have access to funds. I'm not sure if the Director ever made a final decision about whether that assessor would be appropriate and there's certain -- I'm not able to guarantee any particular funds from Legal Aid to cover the costs of such an assessment. That's the only difficulty that I'm in.

[67] MS. GRANDY: The issue with the assessor has been -- we've had ongoing discussions about who should prepare the assessment, and we recommended that one assessor prepare it and Ms. Hawkins didn't agree with Ms. Oiffer preparing the assessment. And then Ms. Hawkins suggested another assessor prepare it, but after she suggested that assessor, Ms. P., on many occasions, said that she didn't want to undergo the assessment.

[68] MS. HAWKINS: That's correct, and I think that's the reason why we've never come to a -- we've never actually come to an understanding of whether that assessor would be appropriate, so I'd just flag that.

[69] THE COURT: What qualifications are required for someone to conduct a Parenting Capacity Assessment?

[70] MS. GRANDY: The Director normally looks at someone that normally conducts assessments like these, especially with a person with mental health, as Ms. P. has, someone that also deals with doing assessments in these areas. And I'm not sure, even at this point, whether or not the assessor that Ms. Hawkins suggested, whether or not she even has experience in this area or not.

[71] THE COURT: Well, who is available in town that does these?

[72] MS. GRANDY: Ms. Oiffer is available in January as well, but I understand my friend isn't --

[73] THE COURT: Dawn Oiffer, right?

[74] MS. GRANDY: Yeah.

[75] MS. HAWKINS: I have suggested to my friend, Bill Stewart, or David Christie, prior to me coming onto this file, suggested Bill Stewart.

[76] THE COURT: Psychologist Bill Stewart?

[77] MS. HAWKINS: The Director hasn't been satisfied with Bill Stewart, that he is qualified.

[78] THE COURT: There is the issue of funding as well?

[79] MS. GRANDY: Sorry?

[80] THE COURT: The issue of funding as well, I understand, right?

[81] MS. HAWKINS: The issue of funding would be a live side from Ms. P.'s perspective only because --

[82] THE COURT: If she were to get her own Parenting Capacity Assessment done by her own individual, not necessarily approved by the Director, then she would be responsible for her own funding, I take it, is your concern?

[83] MS. HAWKINS: Correct. She doesn't -- she does not have access to funding to pay for that kind of --

[84] THE COURT: Right. I have no issue with that.

[85] MS. HAWKINS: -- and certainly --

[86] THE COURT: The funds would need to be provided by the Director, but it has to be a suitable --

[87] MS. GRANDY: The issue with costs, normally the Director bears the cost --

[88] THE COURT: Right.

[89] MS. GRANDY: -- when she chooses her assessor, and normally when -- if the assessor that the Director chooses -- or not chooses but agrees with, then she'll usually split the cost with Legal Aid, and that's what -- that's what the practice has been in the past.

[90] THE COURT: Right. So Ms. P., there is a way to have the assessment done without any cost to Ms. P., the issue is deciding on a suitable person to conduct the assessment.

[91] MS. GRANDY: Right.

[92] THE COURT: I am not familiar with whether Bill Stewart has any --

[93] MS. GRANDY: As far as the Director is aware, Bill Stewart doesn't have experience in Parenting Capacity Assessments.

[94] THE COURT: He may not, but he certainly has a lot of experience and has been used by this Court on numerous other occasions. That does not mean he does, but it does mean that he is not able to do it either. What I am going to do with respect to the Parenting Capacity Assessment, I am going to let counsel discuss this

further, and when this matter returns before me -- are you available, Ms. Hawkins, on February 3rd?

[Discussion re return date of February 3, 2011]

[95] THE COURT: What is going to happen on that date is if the parties cannot agree, you can bring forward before me the name of the individuals that you think would be suitable and we can discuss it further and make submissions. I think counsel should be prepared, though, if we are at the same position we are today, and the Director wants Ms. Oiffer and Ms. P. wants Mr. Stewart, to argue why I should or should not direct that either one of them prepare it, or there may be another individual that is able to do it as well. There is no rush, and it does not have to be done immediately, however, it should be done soon. I think it is relative to the issue of access and, as access is hopefully going to continue to increase, that it may once, at some point, assuming everything goes well, devolve into unsupervised access, a parenting capacity is important in that. So it needs to be done soon. It does not need to be completed for February 3rd, but I would like to move it along. All right.

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COZENS T.C.J.