Citation: *M.K. (Re)*, 2014 YKTC 48

Date: 20141002
T.C. 07-T0066
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 M.K., H.K., M.K., and J.K.;

Publication of the name of a child, the child's parent or identifying information about the child is prohibited by section 173(2) of the *Children's Act* or section 162(2) of the *Child and Family Services Act*.

Appearances:

Tara Grandy	Counsel for the Director of Family and Children's Services
Lauren Whyte (Agent for Malcolm E.J. Campbell)	Counsel for the Applicant

RULING ON APPLICATION

[1] COZENS T.C.J. (Oral): This is an application brought by C.S. to have reasonable and generous supervised access to M.K., year of birth, 2007; H.K., year of birth, 2008; M.H.K. and J.K., year of birth, 2010; (collectively, "the Children"). The Children are members of the Kwanlin Dün First Nation.

[2] C.S.'s application was filed on August 26, 2014. This application is brought in the context of the application by the Director of Family and Children's Services ("the Director") for a continuing custody order in respect of the Children. The Children were

brought into care on June 9, 2014, and the Director filed its application on June 10, 2014.

[3] The Director's application is based upon a claim that the Children are or are likely to be physically and emotionally harmed by C.S. The hearing of the Director's application is set to proceed on October 6, 8, and 9, as well as November 12-14, 2014.

[4] C.S. was awarded custody of M.K. and H.K. pursuant to a Supreme Court consent order made May 7, 2012. She was awarded custody of M.H.K. and J.K. by Supreme Court order made March 1, 2012. She is the legal guardian of the Children.

[5] The Children's parents are A.K. and C.T. They were added as parties to the continuing custody proceedings by court order pronounced July 10, 2014. Counsel for A.K. and C.T. stated at the outset of the hearing of C.S.'s application that they were opposed to the application. No reasons for their opposition were stated and the parents did not participate in the hearing on the application. Ms. Dendys spoke for the Kwanlin Dün First Nation and stated the First Nation's opposition to the application. Again, no reasons were stated for their opposition and the First Nation did not further participate in the hearing of the application.

[6] On February 20, 2014, C.S. was charged with assaulting M.K., H.K., and J.K. with a weapon; a belt. She was placed on an undertaking that did not allow her to have contact with the Children without permission from her Bail Supervisor. On March 19, 2014, C.S. entered a not guilty plea and the matter was set for trial on September 22, 2014.

[7] C.S. was subsequently given permission to have supervised access to the Children. She had visits with the Children, primarily in her home, from March 26, 2014, until May 21, 2014. There was a report to the Director on May 21, 2014, regarding concerns about marks to the faces of M.H.K. and J.K. As a result, C.S. was not granted permission for any further visits and the Children were subsequently taken into care on June 9, 2014. There has been no approved access between C.S. and the Children since that date.

[8] C.S. was then charged on June 18, 2014, with having assaulted J.K. and causing him bodily harm; this charge arose out of the February incident. No charges were laid as a result of the May complaint involving M.H.K. and J.K. The charges arising from February were set to proceed to trial on September 22, 2014. However, the Crown counsel directed a stay of proceedings on all of these charges on August 1, 2014.

[9] I will state at the outset that it is not my intention to go into great detail with respect to the testimony of the witnesses or what is contained in the filed affidavits. While there is relevant information in the testimony of these witnesses and the affidavits, it is appropriate that this information be considered in the hearing of the Director's application, when all the witnesses will be called to testify; it is simply a more suitable forum for this detailed examination of the evidence to occur. I will therefore, to a large extent, confine myself to what is necessary for the purposes of C.S.'s application. This does not mean I have not considered all this information: I am simply repeating in this decision only what I consider necessary.

[10] Counsel for C.S. called three witnesses. The first witness, V.N., is an educational assistant. She testified that on August 27, 2014, she witnessed an interaction between C.S. and M.K. This event occurred just after recess, at approximately 12:25 p.m. She was standing near the rear entrance where M.K. was lining up with other kindergarten students. V.N. was approximately six feet away from this line.

[11] M.K. left the line and approached C.S. who was there to drop off her grandson. M.K., who appeared to be happy to V.N., gave C.S. a hug. V.N. stated that she heard C.S. say the following words to M.K.: "Are you telling people you don't want to talk to mom?" M.K. looked down and went back to the line without saying anything; the entire interaction was less than one minute.

[12] The second witness was S.W., an administrative assistant. She testified that she witnessed an interaction between C.S. and H.K. on August 27, 2014. This event occurred at the end of the school day, approximately 3:02 p.m. She had paged the girls to the office. C.S. walked by with her grandson, whom she had picked up. H.K. left the office and went out into the hallway to give C.S. a hug. S.W. stated that H.K. seemed happy. She heard C.S. ask M.K., who was outside the office, for a hug. S.W. did not see whether M.K. gave her a hug or not. This interaction lasted less than one minute.

[13] C.S., who is 52 years old, testified that she has been in the role of parent to numerous children over the past 23 years. These have been for both brief and extended periods of time. Most of the caregiving was through family agreements. She stated that she has purchased numerous items and structured her home so that it is a

good place for children. She testified that she has been proactive in taking numerous courses to educate and assist her with her parenting and caregiving abilities.

[14] She testified that she has never physically disciplined any of the Children, other than on one occasion when M.K. and H.K. were fighting in the living room. She stated that on that occasion she ended up giving each of them a whack on the bum with her hand, over the clothing, and sent them to their rooms. It was a small whack, and neither girl cried as a result.

[15] C.S. stated that she disciplines the Children by making them stand in a corner for one minute for each year old that they are. At other times she sends them to bed. C.S. denies ever striking any of the Children with a belt. She testified that there is not a belt in her home.

[16] On February 18, 2014, two Family and Children's Services workers came to her home. C.S. thought that they were there to discuss her intended adoption of the Children. The workers asked to look at J.K.'s back, and C.S. agreed. They pulled up his shirt and noted that J.K.'s back was covered with red marks.

[17] Photos of J.K.'s back and legs, taken by Dr. Barbara Grueger that day, were filed as an exhibit in this application. Clearly visible were numerous red and coloured markings, many narrow and long, not only on his back but also on his thigh.

[18] In Dr. Grueger's report, completed after examining J.K., she concluded that the multiple linear markings on J.K.'s back and left buttock warranted further investigation for physical abuse. She was unable to say with certainty what caused these markings

or when the injuries occurred. She stated that the markings "were likely bruising and caused by being struck with an object, possibly a looped cord." She concluded that they were not scratch marks and did not match the pattern of a skin disease.

[19] There is a further report from Dr. Grueger, dated February 27, 2014, regarding the opinion of another physician she consulted, Dr. Dibden, an Associate Professor for the Department of Paediatrics, Faculty of Medicine and Dentistry, University of Alberta. Dr. Dibden concluded that the marks were in a location uncommon for accidentally-acquired injury, and were not scratch marks. They had the appearance of pattern bruises rather than abrasions, and they were likely to have been caused by being struck with an object such as a looped cord or an object shaped in that way, such as a coat hanger. The size of the loop does appear different in different locations, suggesting it is more likely a looped cord.

[20] C.S. categorically denies having struck J.K. or having caused these injuries. She testified that she had no knowledge of when they occurred. She stated that she had bathed J.K. Sunday night and, as I understood her evidence, did not see these marks at that time. I note the 18th of February was a Tuesday and the complaint from the daycare was made on Monday the 17th.

[21] C.S. testified that J.K. has dry skin and she puts cream on his skin. She states that the marks could have been from him being scratched by himself or the dog. C.S. also denies having caused the mark to M.H.K.'s face that was noted on May 21, 2014. She states she has no idea when or how this occurred.

[22] I have reviewed the affidavit of Michaela Maxwell and note the photographs she took of M.H.K. on May 21, 2014, shows bruising under M.H.K.'s right eye. C.S. states that the bruise to J.K.'s cheek occurred when he fell getting out of the bathtub, striking his face. The photograph taken by Ms. Maxwell shows a bruise on the right side of J.K.'s face, between his cheek and his ear.

[23] When asked about the injuries to M.H.K. and J.K. at various times and by various individuals, the Children gave differing explanations. These included M.H.K. being injured at daycare and the other injuries caused by falling in the tub. None of these explanations directly implicated C.S.'s having caused these injuries, and I note that M.H.K. and J.K. are said to have stated to individuals that they were told to say that the injuries were caused by them falling in the tub. I also note in the Information to Obtain of Ms. Maxwell, sworn June 24, 2014, that she states that M.K. and H.K. have said that, at times, C.S. hits them on their body with a belt. C.S. denies having ever struck the girls with the belt or telling anyone or the Children to tell others that they fell in the tub.

[24] C.S. stated that on May 27, 2014, she saw M.K. at the school and called her name. M.K. came over to her and gave her a hug. She stated that she told M.K. that she loved her. She denies having stated what V.N. said she heard.

[25] C.S. stated that she saw M.K. and H.K. at school later that day. She said H.K. came to her and gave her a hug, as did M.K. She states that she told them that she really missed them.

[26] C.S. testified that, on one occasion, after the long weekend in September, she saw H.K., who came and gave her a hug. She told H.K. that she loved her and would see her later.

[27] C.S. is seeking supervised access to the Children in her home from 3:30 in the afternoon to 6:00 or 7:00 at night, and she would interact with them, play, and feed them supper.

[28] C.S. was cross examined by counsel for the Director at length about an incident that occurred in November 2012. In that incident, M.H.K. was taken to the hospital due to having dislocated his shoulder and other injuries. C.S. has stated that this occurred when she ran over and grabbed him by the arm to stop him from falling down the stairs. He was noted to have suffered a haematoma and bruising to the jaw and shoulder.

[29] I know from Cst. Plamondon's testimony that the physician who examined M.H.K. had reported that the injuries suffered by M.H.K. were consistent with the explanation offered by C.S. As such, no criminal charges were laid.

[30] Ms. Alla Blysak testified for the Director. She has been working as a child-in-care social worker since May 2014, with M.K., H.K., and J.K., and M.H.K. since July. She testified that the primary reason that the Director is opposed to access at this time is because M.K. and H.K. do not want access. The second reason is because there is an ongoing RCMP investigation.

[31] Ms. Blysak expressed a concern that the investigation might be compromised by contact, even if supervised, and that it is difficult to predict what the Children's response

would be to a visit as, in her experience, children can react negatively after an access visit. She stated that if something is said in an access visit it can be difficult to manage.

[32] She states that on August 26 she had a conversation with M.K. and H.K. and both girls stated to her that they did not want to visit C.S. M.K. would not provide Ms. Blysak with a reason why she did not want to visit with C.S. H.K. stated that she is scared of C.S. because she hits and strikes them. She further stated that the belt had pointy things on it that were shiny and C.S. told the Children that if they said anything she would call the police. When asked if she felt safe now, H.K. said yes.

[33] Ms. Blysak stated that she is not aware of the Children having asked to see C.S. since June 6, 2014. Ms. Blysak stated that she has had no such conversation with M.H.K. and J.K. that she had had with M.H.K. and H.K. and does not intend to ask them the same questions due to their age. In her experience, she finds that most children will give the questioner the answer they think the questioner wants.

[34] Ms. Blysak, both in her testimony and in her affidavit, has raised concerns about the Children's recent behaviours. H.K. told the Boys Receiving Home staff that adults hit children or will whip them with a belt when they are mad. It is unclear whether H.K. was making any reference to C.S. at this time. Ms. Blysak also stated that she was informed by staff that someone, not being clear whether it was C.T. or C.S., told H.K. that the staff wants her and her brothers and sisters to die, and the staff wishes they were dead.

[35] Ms. Blysak noted that M.K. has meltdowns that require her to be held and physically restrained. M.K. will tell her siblings to hit and hurt the staff. She talks about

harming herself. She hits her head on the floor and yells at the staff. She hits her siblings when she is angry. She says that the staff will call the RCMP and have her arrested.

[36] Ms. Blysak listened to a voicemail from the Boys Receiving Home Worker, Bob Kuntz. M.K. is heard in the voicemail stating, "No. Stop talking about me." When asked what this is about, she states, "because you're going to shoot me." Apparently M.K. says things like this often and also states things such as, "go to Wal-Mart and get a gun and shoot me, light me on fire, kill me or spank me, and I will be good." M.K. is noted to be an angry and closed child.

[37] Also noted are behaviours by M.H.K. and J.K., with significant swearing, hyperactivity, spitting, scratching, and hitting others when angry. J.K. is noted to be the more aggressive and has to be physically restrained at times. There is an incident report from August 13, 2014 in which it is noted that M.K. became angry with H.K. and tried to hit her. He then tried to hit the staff. J.K. ran at the staff screaming and hitting the staff member. M.K. also tried to hit the staff member, digging her nails into the staff member's hand and clawing and attempting to bite his abdomen.

[38] M.K. was screaming at H.K. to not listen to staff. After 15 to 20 minutes, the Children had calmed down enough that they were able to go to daycare. Ms. Blysak also notes that the remaining Children are calmer when M.K. is not with them.

[39] Ms. Blysak is concerned with the behaviour of all the Children, in particular M.K. In her 25 years experience, these behaviours are usually associated with neglect, witnessing violence, attachment and relationship issues, numerous placements with

different caregivers, physical neglect, and strict and physical discipline. I note that Ms. Blysak, in her affidavit, states that an historical review of the Family and Children's Services' files indicates that, prior to living with C.S., M.K. exhibited, "behaviours of anger, aggression and controlling parentified behaviour towards her siblings, especially H.K."

[40] Ms. Blysak testified that psychologist, Nicole Bringsli, is in the beginning stages of conducting a psychological assessment of the Children; this will take at least a month.

[41] In cross-examination, Ms. Blysak stated she has never observed C.S. with the Children. She agreed that removing the Children from C.S.'s home likely had a destabilizing impact on them.

[42] Cst. Kelly Plamondon testified she has been involved in the criminal investigation regarding C.S. since the February allegations. She testified that when she interviewed M.K. on February 19, 2014, M.K. drew a picture of the belt that was used to hit them, and H.K. said the belt was kept in C.S.'s room. Cst. Plamondon stated that M.K. and H.K. have recently provided her with new information that she has turned over to Crown counsel.

[43] Cst. Plamondon has requested that the stay of proceedings be lifted or new charges laid. When she checked with Crown counsel approximately 3 weeks ago, it was her understanding at that time that the stay of proceedings was to remain in place.

[44] In an interview on August 27, 2014, H.K. drew a picture of the belt she was struck with by C.S. She said she had been struck on the back in C.S.'s home. She also stated that C.S. had stuck her (H.K.'s) fingers down her throat when H.K. swallowed some pills that were in C.S.'s room, drawing blood. H.K. advised Cst. Plamondon she wanted no visits with C.S.

[45] In her interview on the same day, M.K. stated that she also did not want access visits with C.S. She stated that she had been hit five times on the butt by C.S., although not clear as to whether on one or more occasions. However, Cst. Plamondon understood it as being on five separate occasions. M.K. stated it was with the same belt as described in the February interview and that it was kept in the bedroom.

[46] Both M.K. and H.K. stated that they had been told by C.S. not to talk about what happened in the home or they would get into trouble. Cst. Plamondon stated that the two girls were clearer and more articulate in detail than they had been in the February interview.

[47] Cst. Plamondon further stated that she has very recently received additional information from Mr. Kuntz regarding M.H.K. and J.K. and the issue of access with C.S. that she needs to follow up on with Mr. Kuntz before she speaks to them. She has not been able to do so as of the date of the hearing of the application due to Mr. Kuntz's unavailability, but hopes to be able to do so by the end of September. Cst. Plamondon did not say what this information was but considered it to be part of an ongoing investigation. Depending on what she hears from Mr. Kuntz and a potential follow-up

interview with M.H.K. and J.K., additional information regarding them may be turned over to Crown counsel for consideration.

[48] Section 4 of the *Child and Family Services Act* states that:

> 4(1) In determining the best interests of the child all relevant factors shall be considered, including
>
> (a) the child's safety, health and well-being;
> (b) the attachment and emotional ties between the child and significant individuals in the child's life;
> (c) the views and preferences of the child;
> (d) the child's physical, cognitive and emotional needs and level of development;
> (e) the importance of continuity and the resulting stability to the child, and the effect of any disruption in that continuity;
> (f) the child's cultural, linguistic, religious and spiritual upbringing and heritage;
> (g) the importance to the child of an on-going, positive relationship with their parents and with members of their extended family;
> (h) the ability of a proposed care provider for the child to fulfill parental responsibilities;
> (i) the role assumed by a proposed care provider during the child's life; and
> (j) any history of family violence or child maltreatment perpetrated by a prospective care provider, and the effect on the child of any past experiences of family violence or maltreatment.
>
> (2) If a child is a member of a First Nation, the importance of preserving the child's cultural identity shall also be considered in determining the best interests of the child.

[49] With respect to positions of the parents and the Kwanlin Dün First Nation, counsel for C.S. submits I should give next to no weight to the opposition of the parents and the First Nation to C.S.'s application. I am inclined to agree. I have no indication

that the parents, although parties, have expressed any great interest or involvement in the proceedings, neither did I hear any evidence or submissions on the evidence as to what the parents' position is based on.

[50] With respect to the Kwanlin Dün First Nation, they have not applied to be added as parties to the Director's application, and neither do I have any evidence or submissions from the First Nation as to what the reason for their opposition to C.S.'s application is.

[51] In the case of both the parents and the First Nation, I consider that the simple opposition to the granting of C.S.'s application, without more or any reasons being given or evidence called, is not probative or particularly helpful to me in resolving the issue before me on this application. That is not to say that such a position could not be probative or of value, but it simply was not in how it developed in the application that was before me. I would need more in the way of information in order to give any particular weight to this simple opposition. That is not to say I discount it entirely, I simply do not accord it much weight.

[52] Mr. Campbell submits that C.S. has a long-standing history of being a good caregiver to numerous children, often with the support of the Director. With respect to the position of the Children regarding access, he submits that the position of M.K. and H.K. as expressed to Ms. Blysak must be considered in light of their interaction with C.S. at school the next day. He submits that we currently have virtually no information regarding what M.H.K. and J.K. want in regard to access, and at most, there is only this

somewhat speculative information that may be obtained from a third-party at the Boys Receiving Home.

[53] Mr. Campbell further submits that the risk of compromising any RCMP investigation is extremely speculative and nebulous at best. All the information that the RCMP has gathered regarding M.K. and H.K. has been turned over to the Crown for review. At this point, there is no indication from the Crown to the RCMP that the stay of proceedings is to be lifted.

[54] With respect to M.H.K. and J.K., he submits there is little reason to believe rather than speculate that any probative information will be obtained that could impact upon any RCMP investigation.

[55] Mr. Campbell raises a valid point with respect to the RCMP investigation in this matter in that it appears there was no attempt to obtain a search warrant to locate the belt, notwithstanding it had apparently been described by the girls and its location disclosed. In light of this not having been done, he submits to what extent is it reasonable that any further investigation will result in information that could result in further charges being prosecuted against C.S.

[56] Counsel for the Director submits that access is not in the Children's best interests and puts their safety at risk both physically and emotionally through re-victimization.

[57] She points to there being three separate allegations of child abuse, being November 2012, and the February and May 2014 incidents, and the details surrounding

these allegations. She also points to the views of M.K. and H.K. as expressed to Ms. Blysak and Cst. Plamondon that they do not wish to have access visits with C.S.

[58] Of particular concern, she submits, are the statements of the Children that they were not supposed to tell anyone of specific occurrences, and the question C.S. asked M.K. on August 27, 2014 regarding her telling people she did not want to see mom anymore. The Director is concerned that the Children will clam up and not speak openly with the professionals such as Ms. Bringsli.

[59] It is the Director's position that any access is premature at this point.

[60] I turn to the position of the child advocate, as stated in *Baxter v. Benoit*, 2004 YKSC 60, which was a custody proceeding. The role of the child advocate appointed under the *Children's Act* that was then in force was examined in detail by Veale J.

[61] After referring to the decision of Stuart J. in para. 27 of *Baxter*, which states:

> 1. Where the child is sufficiently competent and mature to provide clear instructions, the child advocate's task is similar to the task of representing an adult. In such circumstances the child advocate should not take any separate position than the child's instructions.
>
> 2. Where the child is not sufficiently mature to provide instructions but has some preferences, the child advocate must present evidence in support of the child's preferences and must as well present to the court all evidence the child advocate considers germaine (sic) to determine the best interests of the child.
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> 3. Where the child is unfit, or simply incapable of giving instructions, or stating a preference, the child advocate must lead all evidence relevant to determine the best interests of the child and should submit to the court the child advocate's perception of the best interests of the child.

[62] Veale J. went on to reference the admonition of Abella J. from the *Re W.,* (1980) 13 R.F.L. (2d) 381 (Ont. Prov. Ct. - Family Division), case, that the child advocate should not express or substitute their opinion for that of the child.

[63] Veale J. concluded in paras. 32 and 33 that a child advocate should, of course, avoid becoming witnesses by giving evidence, and he states that the child advocate can indicate to the court the child's view or the child's preference whether to reside with one parent versus the other—which of course is an analogy I can bring into this case—and indicating the evidence to support that position, which must be presented by the child, an expert, or other adult as may be agreed upon by the parties and the courts.

[64] Veale J. states at para. 38 that he does not:

> ...consider it appropriate for a child advocate to tell the Court that they see their role as that of friend of the Court and not as advocate for the child. In my view, once appointed, the child advocate always represents the child, in the variety of ways discussed below. The diminished capacity of the child may result in greater effort to interview other people in the child's life, but it does not change the legal obligation of lawyer to client, unless relieved by the Court.

[65] And he goes on, in para. 39, to list a number of the steps that the child advocate can take.

[66] I do not find that, from my fairly quick review of the legislation under the *Children's Act*, R.S.Y. 2002, c. 31 and now the *Child and Family Services Act* that the role of the child advocate has changed substantially. I have not done much research on this, and of course it is not an issue that was raised with the parties, but it appears to me that the decision of Veale J. still applies to the role of child advocate.

[67] In this application, the child advocate, Ms. Mooney, participated to some degree in the hearing. Her role was somewhat limited, however; she has not been long on the file and not been able to meet with the Children to the extent necessary to obtain any instructions from M.K. and H.K. With respect to M.H.K. and J.K., their ages may significantly impact on her ability to obtain instructions from them in any event. She did not, understandably in the circumstances, call any evidence.

[68] Her opposition to C.S. being granted supervised access is premised to a large extent on the concept of erring on the side of caution until we know more. Mr. Campbell points out, with some basis in the evidence, that playing it safe in this matter is not that clear cut given the current behavioural issues the Children are having.

[69] Ms. Mooney, in particular, expressed her concerns regarding the question by C.S. to M.K. at school overheard by V.N., and the evidence indicating that the Children were told by C.S. to say particular things to others regarding certain incidents. Ms. Mooney also relied on the evidence of the Children's wishes as testified to by Ms. Blysak.

[70] To the extent that Ms. Mooney's submission is based on the evidence proffered by others and not by any instruction she may have received or evidence that she insured was presented in Court on the Children's behalf, I find I must be careful in how I handle her submission. This is to say that the submission from Ms .Mooney is to be contrasted to that of a child advocate who has had the time and the opportunity to meet with the Children and consider and arrange for the necessary evidence to be called that

will enable the position of the Children to be best put before the Court or at least what is in the best interest of the Children if they are unable to give instructions.

[71] Therefore, while I recognize Ms. Mooney's submission, I find it to be less persuasive than it may have been had she had better opportunity to be involved with the Children.

[72] In considering all the above, I find that I have a number of concerns: certainly the injuries suffered by J.K. in February and both M.H.K. and J.K. in March raise a concern about possible physical abuse of the boys. Also, the allegations by M.K. and H.K. regarding being hit with a belt by C.S. raise concerns.

[73] I am cognizant of the fact that there was an incident in November 2012 that involved M.H.K. incurring injuries that places the latter allegations in context. I cannot forget, however, that these are allegations that have not been proven; no charges were laid regarding the November 2012 incident, and the charges in regard of the February incident were stayed. No charges were laid in respect of the May allegations.

[74] I recognize that the criminal standard of proof beyond a reasonable doubt does not apply in these proceedings. A decision by the Crown that a case of assault cannot be made out on the requisite standard of proof beyond a reasonable doubt does not mean that no abuse occurred on a balance of probabilities or to the extent necessary to impact on a decision regarding custody and access.

[75] I am not in a position, on the evidence before me, to make a finding as to whether C.S. assaulted the Children or not; perhaps in the upcoming hearing the

evidence will allow for such a decision to be reached. I recognize, however, that there is a basis for a legitimate concern in this regard.

[76] I am concerned in particular about the evidence of V.N. that C.S. asked M.K. if it was true that she was telling people she didn't want to see mom. V.N. was in a position to hear accurately what was said, and she does not have any reason to fabricate this evidence. In light of V.N.'s evidence, I do not accept the evidence of C.S. that she did not say this to M.K. C.S. has a reason to deny having said this to M.K., as such a question is clearly contrary to the best interest of M.K. and potentially harmful to C.S.'s position in this, and in the Director's application.

[77] This incident involving V.N. also gives me significant concern in regard to how I am to consider other comments the Children are said to have made, that C.S. has told them not to say anything or to say a specific thing to others regarding other incidents. I find that C.S.'s denials of such statements are questionable, given my assessment of her credibility on the issue of the question she put to M.K. on August 27, 2014.

[78] I am, however, also concerned about the negative behaviours that the Children are demonstrating, in particular M.K. I am not prepared, however, to find that these behaviours are any more linked to the allegations of child abuse than they are to the disruption of the Children's lives over the past number of months. In this regard, I refer to the behaviours M.K. demonstrated before C.S. was granted custody of her. There appears to have been an environment of relative stability in C.S.'s home, notwithstanding the November 2012 incident, and concerns expressed by C.S. around that time regarding whether she should be able to continue to care for the Children.

[79] In all the circumstances, I am not prepared to grant C.S. supervised access to the Children in her home. I have significant concerns that C.S. would be in a position to—and quite likely would—ask the Children things or say things to them that would be contrary to their best interests, in particular in light of the upcoming application. Neither, however, am I prepared to accede to the Director's position that there should be no access.

[80] I believe that the Children's best interests are met by allowing C.S. to have access visits with them in a public setting or location otherwise approved by the Director with a supervisor put forward and agreed to by the Director and C.S., or a supervisor appointed by the Director.

[81] The Children had a time of relative stability in C.S.'s home and I find it likely that there is, at least with respect to M.K. and H.K., a connection between them and C.S. that should not be undervalued. To what extent the Children's behaviours are connected to this loss of relative stability is unclear, but it is a factor I cannot disregard. I have no concerns about there being any physical abuse in such an access visit, and any concerns regarding things that may be said are diminished given the abruptness with which a visit could be terminated and further visits denied if C.S. speaks inappropriately to the Children.

[82] As to the wishes of the Children, I weigh the comments of M.K. and H.K. to Ms. Blysak carefully, not that I have any reason to doubt what they said to her, but I am not so certain that what they said is as clearly as broad sweeping as the Director would have me accept. There is a significant difference between what M.K. and H.K. may

perceive regarding access or a visit, in that they may only think of it being in C.S.'s home, where they stated the belt is kept. They may not feel the same way regarding visits in a public or safe place.

[83] The actions of M.K. and H.K. at the school, approaching and hugging C.S., must also be considered.

[84] The Children are clearly in a state of flux, to some extent, and their lives are suffering from the current disruption. C.S. provided a period of stability in their lives. To the extent that the connection with C.S. can be maintained without risking the physical and emotional safety of the Children, I am satisfied that it should be facilitated, pending the outcome of the Director's application, where the Court will have considerably more evidence than I have before me.

[85] The order will be for C.S. to have supervised access visits, no less than one time per week, in a public place or other location suitable to the Director, with a supervisor agreed to by the Director and C.S., or otherwise, in the absence of any such agreement, one approved by the Director. For the first two weeks, the visits shall be a minimum of 30 minutes. Subsequently, the visits shall be for a minimum of 60 minutes. These times are, of course, subject to any issues arising during the visits that are impacting on any of the Children.

[86] Either party is able to bring the matter back before me upon the receipt of additional relevant evidence that may have a bearing on the issue of this interim access.

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COZENS T.C.J.