

WARNING

The court hearing this matter directs that the following notice be attached to the file:

This is a case under Part V of the *Child, Youth and Family Services Act, 2017*, (being Schedule 1 to the *Supporting Children, Youth and Families Act, 2017*, S.O. 2017, c. 14), and is subject to subsections 87(7), 87(8) and 87(9) of the Act. These subsections and subsection 142(3) of the Act, which deals with the consequences of failure to comply, read as follows:

87.—(7) Order excluding media representatives or prohibiting publication.— Where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding, the court may make an order,

. . .

(c) prohibiting the publication of a report of the hearing or a specified part of the hearing.

(8) *Prohibition re identifying child.*— No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

(9) *Prohibition re identifying person charged.*— The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

. . .

142.—(3) Offences re publication.— A person who contravenes subsection 87(8) or 134(11) (publication of identifying information) or an order prohibiting publication made under clause 87(7)(c) or subsection 87(9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or to both.

ONTARIO COURT OF JUSTICE

CITATION: *Children's Aid Society of Toronto v. S.S.*, 2020 ONCJ 170
DATE: April 2, 2020
COURT FILE No.: Toronto C40391/20

B E T W E E N :

Children's Aid Society of Toronto

Applicant,

— AND —

S.S. (mother)

A.I (father)

Respondents

Before Justice Roselyn Zisman
Heard on March 24, 2020
Reasons for Judgment released on April 2, 2020

Chithika Withanage,counsel for the applicant society
Gary Gottlieb counsel for the respondent mother
A.I. (father) on his own behalf

Decision on temporary care and custody motion

Zisman, J.:

1. Overview

[1] This is a temporary care and custody motion with respect to the parents' two young sons, A.I. ("AI") who is 5 years old and is autistic and F.I. ("FI" or "the baby") who is 8 months old.

[2] At the time of the birth of each child, hospital staff contacted the children's aid society regarding concerns about the mother's possible mental health issues and concerns that both parents were struggling with parenting issues.

NOTE: This judgment is under a publication ban described in the WARNING page(s) at the start of this document. If the WARNING page(s) is (are) missing, please contact the court office.

[3] Since May 2019, the Children's Aid Society of Toronto (“the society”) has been consistently involved with the family. There have been multiple concerns with respect to lack of appropriate supervision, failing to meet the medical needs of the children and failure to ensure AI attended school and received assistance for his autism. There have been allegations by the father that the mother is suffering from mental health issues and threatened to kill herself and the children, allegations by the mother that the father has mental health issues, allegations by the mother that the father is not helping her with the children and persistent allegations by the mother that the father is having an affair and that his mistress is pregnant.

[4] The society received numerous and repeated referrals from the police with respect to issues of domestic conflict, lack of supervision of the children and medical emergencies concerning the children.

[5] On January 8, 2020 the father was charged with assault against the mother and he has a no contact order against her. The children remained in the care of the mother and the maternal grandmother who lived with them.

[6] On March 17, 2020 counsel for the society filed a Protection Application, Notice of Motion and a lengthy supporting affidavit of the family service worker requesting an order without notice to either parent that the children be placed in the care of the society with access at the discretion of the society.

[7] It was the position of the society that it would be extremely risky to advise either parent of this step before obtaining a court order due to concerns that the mother was unstable, had threatened to kill herself and the children, had been formed under the *Mental Health Act* in December, her level of cooperation with the society had drastically been reduced and there were no other adults who exerted any control or stability over her. There was further a concern that the father had exercised poor judgement in the past and might contact the mother to warn her and perhaps blame her for the society’s plan.

[8] Based on the material filed, I granted a temporary without prejudice order placing the children in the care of the society. The motion was then returnable before me on March 24, 2020 with notice to both parents.

[9] The mother retained counsel and was able to file an affidavit. However, with such short notice she was not able to respond fully to all of the allegations set out in the society’s 40-page affidavit.

[10] The father attended court and was directed to call the Legal Aid 1-800 number for summary advice. Unfortunately, when he called, he received a voice mail message to call back tomorrow. Attempts were also made to contact duty counsel by email but there was no response. The father was advised to attempt to continue to contact legal aid or private counsel. He was permitted to make brief oral submissions.

2. Background

[11] The mother is 32 years old. She is trained as a nurse in India but did not practice and instead worked as a flight attendant for Saudi Airlines. Her first language is Hindi

and she also speaks Urdu. Although English is her second language, she speaks it well as she learnt it in India and for her job as a flight attendant.

[12] The mother came to Canada in 2012 for a vacation. She met the father and remained here. They were married on March 13, 2013.

[13] The father is 43 years old and employed as a teacher at an Islamic school.

[14] The mother has been the primary caregiver of the children as the father worked full-time.

[15] AI has been diagnosed with autism, he is largely non-verbal and has behavioural issues.

3. Credibility

[16] As this is a temporary care and custody motion, the court is able to admit and act on evidence that it considers to be credible and trustworthy.

[17] The family service worker has relied on information she received from impartial third parties such as hospital staff, the police and the school principal and from the society's own records. This evidence at this stage of the proceedings is credible and trustworthy.

[18] The mother has provided some documentary evidence that I also find credible and trustworthy.

[19] However, where there is a conflict between a version of events by the mother and the version by the society workers and third parties, I find the society's evidence more credible due to the many inconsistencies in the mother's statements.

[20] I also find that the mother's claim to be insincere that she may miss innuendo or the meaning of sophisticated words and at times for legal matters and instructions may require translation. She deposes that the society never asked her if she needed a translator or if she understood everything the society worker told her.

[21] I find this is just another example of the mother's tendency to blame others for the concerns or issues that have arisen. I find that the mother has had no difficulty understanding the concerns or information provided to her by the society. At no time did the mother ask for an interpreter or indicate that she did not understand something that was being said to her.

4. Position of the parties

[22] It remains the position of the society that the children be placed in the care of the society and that no terms of supervision would be adequate to alleviate the risk of harm to the children.

[23] It is the mother's position that she understands the serious concerns of the society but with the assistance of her mother she can continue to meet the needs of the children. She seeks an order that the children be returned to her care. The mother is

agreeable to a temporary without prejudice supervision order allowing the society workers to attend at her home for announced and unannounced visits and that her mother help her with the children.

[24] In the alternative, if the court feels that she cannot manage the needs of her son AI, she is agreeable that he remain in society care but that he spend week-ends in her care.

[25] It is the position of the mother that there is no longer any concern about domestic conflict as the parties are now living separate and apart and based on the medical evidence she has now produced, she does not suffer from any mental health issues.

[26] It is the position of the father that he is very close to their son AI and he now has the proper accommodations to care for him. The father did not make any other submissions.

5. Legal framework

[27] The legal test to be applied on a temporary care and custody motion is set out in subsections 94 (2), (4) and (5) of the *Child, Youth and Family Services Act, 2017* (CYFSA) as follows:

94 (2) Where a hearing is adjourned, the court shall make a temporary order for care and custody providing that the child,

(a) remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part;

(b) remain in or be returned to the care and custody of the person referred to in clause (a), subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate;

(c) be placed in the care and custody of a person other than the person referred to in clause (a), with the consent of that other person, subject to the society's supervision and on such reasonable terms and conditions as the court considers appropriate; or

(d) remain or be placed in the care and custody of the society, but not be placed in a place of temporary detention, of open or of secure custody.

Criteria

(4) The court shall not make an order under clause (2) (c) or (d) unless the court is satisfied that there are reasonable grounds to believe that there is a risk that the child is likely to suffer harm and that the child cannot be protected adequately by an order under clause (2) (a) or (b).

Placement with relative, etc.

(5) Before making a temporary order for care and custody under clause (2) (d), the court shall consider whether it is in the child's best interests to make an order under clause (2) (c) to place the child in the care and custody of a person who is a relative of the child or a member of the child's extended family or community.

(6) A temporary order for care and custody of a child under clause (2) (b) or (c) may impose,

(a) reasonable terms and conditions relating to the child's care and supervision;

(b) reasonable terms and conditions on the child's parent, the person who will have care and custody of the child under the order, the child and any other person, other than a foster parent, who is putting forward a plan or who would participate in a plan for care and custody of or access to the child; and

(c) reasonable terms and conditions on the society that will supervise the placement, but shall not require the society to provide financial assistance or to purchase any goods or services.

[28] The court is also required to consider and give due weight to a child's views and wishes in accordance with the child's age and maturity pursuant to subsection 94 (11) *CYFSA*. In view of the children's ages in this case, this is not a factor.

[29] At a temporary care and custody hearing, the onus is on the society to establish, on credible and trustworthy evidence, that there are reasonable grounds to believe that there is a real possibility that if a child is returned to the respondents, it is more probable than not that he or she will suffer harm.

[30] Further, the onus is on the society to establish that the child cannot be adequately protected by terms of conditions of an interim supervision order.¹

[31] A court must choose the order that is the least disruptive placement consistent with adequate protection of the child.²

[32] *Subsection 94 (10)* of the *CYFSA* permits the court to admit and act on evidence that the court considers credible and trustworthy in the circumstance. In determining what evidence is credible and trustworthy, the evidence in its entirety must be viewed together. Evidence that may not be credible and trustworthy when viewed in isolation might reach that threshold when examined in the context of other evidence.³

[33] Exposure to a pattern of domestic violence has been accepted as creating a risk of emotional harm to children.⁴

[34] The *CYFSA* gives priority to the person who had charge of the children prior to society intervention. There can be more than one person in charge of the children.⁵

[35] A society seeking an order for temporary society care at this early stage of a case must only demonstrate that it has reasonable grounds to believe that there is a protection risk for the child that justifies society intervention.⁶

¹ *Children's Aid Society of Ottawa-Carleton v. T.*, [2000] O.J. No. 2273 (Ont. Sup. Ct.).

² *CYFSA s. 1 (2)*; *Children's Aid Society of Hamilton v. B.D. and F.T.M.*, 2012 ONSC 2448 (CanLII)

³ *Jewish Child and Family Services of Toronto v. A.K.*, 2014 ONCJ 227 (CanLII) at paragraph 18; *CAS of the Regional Municipality of Waterloo v. S.S.H.*, 2019 ONSC 5365.

⁴ *Children's Aid Society of Toronto v. M.S.*, [2010] O.J. No. 2876 (SCJ).

⁵ *CYFSA s. 51(2)*; *Children's Aid Society of Toronto v. A.(S.) and R. (M.)*, 2008 ONCJ 348.

⁶ *L.D. v. Durham Children's Aid Society and R.L. and M.L.*, [2005] O.J. No. 5050 (Ont. Div. Ct.).

[36] The burden on the society at this stage does not go as high as showing that on the balance of probabilities there is an actual risk to the child in the parent's care.⁷

6. Issues to be determined

1. Are there reasonable grounds to believe that there is a real possibility that if the children are returned to the mother (as she is the pre-intervention caregiver) it is more probable than not that they will suffer harm?
2. Can the children be protected by terms of a temporary supervision order?
3. If both children cannot be returned to the mother, can the baby FI be returned?
4. If the children cannot be returned to the mother, can either child be placed with the father?
5. If the children remain in care, what access should be ordered?

7. Analysis

7.1 Is there a real possibility that the children will suffer harm if they are returned to the mother?

[37] I have no difficulty finding that the society has met the first part of the two-part test. There are reasonable grounds to believe that there is a risk that if the children were returned to the mother, they will likely suffer harm.

[38] During mother's counsel's submissions it was acknowledged that there were serious and concerning incidents that caused the society to initiate this Protection Application. However, the mother's affidavit does not acknowledge these concerns and instead either minimizes the concerns or blames the father.

[39] I will outline the several categories of risks alleged by the society as it is important for both parents to understand the basis upon which the court has found there are risks of harm to the children.

7.1 (a) Risk that the mother suffers from a mental health problem

[40] The society based its concerns about the mother's mental health issues based on information received from the hospital after FI was born. The information relayed raised concerns about prior post partum depression and anxiety and that the mother declined a psychiatric referral that had been recommended.

[41] The family service worker had concerns about the mother's mental health due to the allegations made by the father and based on her own interaction with the mother.

⁷ *Catholic Children's Aid Society of Toronto v. M.L.R.*, 2011 ONCJ 652

[42] On October 28, 2019, the mother told the society worker a bizarre story about AI being afraid to go to the school office because he was afraid his father's mistress would put him in a locker. There was no further explanation or context.

[43] When the society worker attended at the home on December 31, 2019 the mother looked dishevelled and she was distraught. She had been out checking on the father's whereabouts the night before. The father suggested that they take a break and he leave for a couple of weeks. In order to address their conflict, after some discussion, the mother agreed that the father could take AI to stay with him.

[44] When the father was leaving, the mother begged him to stay, saying she would change and never bring up his alleged mistress again. She stopped him from opening the door and they then went into the bathroom to talk privately. When they came out, they were speaking in Urdu. The father told the society worker that the mother threatened to cut her wrists if he left.

[45] When the father, the society worker and AI left the apartment, the mother followed them outside onto the street. She was in her bathrobe and with no socks. After about 10 minutes, the father decided to leave on his own as the mother would not let him leave with their son. The mother ran through the parking lot and chased the father down the street.

[46] Both parents just left AI. The society worker took AI back to the apartment. After the mother returned, she said she was washing "dog potty" from her feet and then she said she was experiencing chest pains and an ambulance was called.

[47] The police later reported to the family service worker that the mother was "obsessing" about the father's mistress threatening to harm and kill her children. The police wanted clarification if this was a recent incident. According to the society worker, the mother was referring to an incident that she alleged had occurred 1 or 2 years previously and that she had previously reported to the society and the police.

[48] The mother was admitted to the hospital on a Form 1. The father reported to the police and hospital staff the society worker that the mother was suicidal and threatened to harm the children.

[49] The mother in her affidavit provided the records pertaining to her mental health assessment. Dr. Malik, the presiding psychiatrist, found no evidence of suicidal or homicidal ideation. It was noted that the most responsible diagnosis was "situational crisis." The mother was found to be alert, oriented and her functioning was normal. She had insight and judgement into her self care. The father brought the baby to the hospital and it was noted that the mother had amicable interaction with the baby and breastfed him as needed.

[50] The psychiatric team concluded that the mother did not pose any risk to her children. The discharge summary indicates that the society would be notified that the mother would be discharged that day, January 2nd and the society may wish to continue their assessment and investigation and take whatever measures they deem fit to protect the children.

[51] The psychiatrist's report states that the mother was found to be more credible than the father. It was noted that the father changed the date of the alleged threats by the mother to harm herself and the children, that he stated that he wanted the mother to be discharged and would take her home and that he had no safety concerns about her with the children.

[52] I place no weight on the assessment of the father's credibility by the hospital staff as the father has not had an opportunity of explaining or responding to the statements about himself. Further, it is not clear if the mother's ongoing allegations about the father and his alleged mistress are true.

[53] With respect to the psychiatric assessment of the mother, I accept the diagnosis that during the mother's hospital stay she did not present with any concerning mental health issues.

[54] I find that although further investigation is necessary with respect to the mother's mental health history, at the present time the children are not at risk of harm due to the mother's mental health.

[55] However, I agree with the submissions of society counsel, that if the mother does not suffer from any mental health issues, then her inability to meet the basic expectations of caring for the children raises other concerns and there is no explanation that might explain her inability to meet the routine needs of the children.

7.1 (b) Risk to the children's physical health

[56] The mother has placed the children's physical health in jeopardy as she has not followed through with meeting the children's physical needs in a timely fashion.

[57] The mother has continually blamed the father for any lapse in following up with the medical needs of the children or offered no excuses for failing to do so.

[58] For example, she did not attend for the well baby visits and was late in ensuring that FI had his 4- and 6-month vaccinations. Although they did occur, she does not explain why they were late except to blame the father because he has the car. The baby only received his 6-month vaccination when the society paid for a taxi to the doctor's office.

[59] On August 2, 2019, AI had a serious accident while both parents were at the mosque with him. The mother reported the accident occurred due to the father's neglect. Part of AI's thumb needed to be amputated. Upon his release from the hospital, neither parent properly administered his antibiotics and did not follow up with the issues they were having managing his pain until the society worker told them to do so. They also missed the plastic surgeon's appointment. Both parents blamed each other for missing the appointment and for who was responsible for trying to reschedule the appointment. It does not appear the appointment was ever rescheduled.

[60] The society's infant nurse specialist attended at the home to provide the mother with assistance regarding feeding and overall infant care. Although the assistance of the public health nurse had been offered, the mother refused.

[61] The society nurse has been involved in attempts to assist the parents since November 2019. She found the mother was nurturing and attentive with the baby and responding to his feeding cues by breast feeding him.

[62] But there was a lack of structure and no routines in the home. The mother lacked insight into growth, nutritional, medical and developmental needs of children. She was slow to feed the baby on solids, had no regular meal routines, and lacked knowledge of the importance of good nutrition.

[63] The parents did not provide proper nutrition for AI. They stated that he only eats pizza and McDonald's French fries. The mother said that she had spoken to a pediatric neurologist in October who told her it was normal. This information appears highly unlikely. Neither parent took any steps to address this feeding issue.

[64] The school reported that one day the mother only sent cookies for AI to eat for lunch.

[65] On January 29, 2020, the mother reported that AI had not eaten for 2 days and she was taking him out for pizza as he would not eat anything else. The society worker observed that he was drinking a yoghurt drink. The mother then stated that he will drink but not eat.

[66] The mother gave inaccurate information such as stating the doctor was worried about the size of the baby's head but when the family service called the doctor, he stated that he had no record of having seen the baby. Therefore, it is unclear which doctor, if any, told the mother this. The society nurse measured the baby's head and felt it was a normal size.

[67] The mother gave conflicting information about the baby's feeding. She said that she was only breastfeeding, and then other times said he ate pureed food and cereal. At then another time spoke of him not eating these foods.

[68] On January 10, the society nurse attended at the home. When the society nurse asked to see the crib, the mother refused and then told her that the baby slept in the crib but slept with her for feeding. The mother was warned about the danger of leaving the baby in her bed as he could fall off or even worse be suffocated. This same warning had been given to the parents in May.

[69] The mother told the nurse she had put baby bumpers on the bed. The mother was told to remove them for safety. On February 14th, when the society nurse attended again, the bumper pads were still on the crib.

[70] In July 2019, the parents' apartment was infested with cockroaches. The parents refused to permit the superintendent to spray the premises. The mother has produced a letter from her doctor dated October 10, 2019 stating that pesticide spray may be harmful to an infant and should not be used at the present time. At the time the mother told the family service worker that if the apartment was sprayed, they needed to be out for 72 hours. This information is not in the doctor's letter nor was it information that was provided by the superintendent. The mother does not state what steps the parents took themselves to deal with this issue.

[71] The society high risk nurse recommended that the mother could benefit from parenting guidance and teaching but she was unwilling or unable to work with community supports. Some of the supports that had been suggested were Early Years Centre, Scarborough Women's Centre, dietician home visitor and VHA Health Care Service.

[72] Despite the assistance provided by the family service worker and the society infant nurse specialist for many mothers, the same issues and concerns continued and the mother did not avail herself of any of the community services that were recommended.

7.1 (c) Risk due to lack of supervision

[73] There have been issues regarding one or both of the children not being properly supervised by the parents and about the lack of any insight or concern about the potential dangers.

[74] On June 6, 2019, the father left AI in a store unattended while he went to another store. The mother and baby were in the car. There had been similar reports twice that week. The father did not express any concerns and stated he told the mother to watch to see if AI left the store.

[75] On August 2, 2019, AI was not properly supervised while at the mosque and as a result had a part of his thumb amputated. When asked if he could have done anything to prevent the injury, the father said he could not think of anything he could have done differently.

[76] On September 22, 2019, the mother called the police advising that she had left the baby on the couch with father while she was bathing AI. When she returned, she found the baby lying face down on the couch and having difficulty breathing. The father told the police the mother overreacted.

[77] On January 29, 2020, while on the telephone with the society worker, the mother screamed that AI should come inside and stay away from the balcony. When the society worker told the mother to lock the balcony door, the mother stated that there was no lock and she had complained to the superintendent. However, the society worker confirmed with the superintendent that the mother had never made a complaint.

[78] Due to her concern about the safety of the children, the society worker attended that day and inspected the balcony door. There was a lock but when you turned the handle it opened. The society worker had the mother move a table in front of the door for the child's safety.

[79] The mother, in her affidavit denied this incident and claimed the family service worker misunderstood her. The mother claimed that while on the phone with the worker, she heard AI playing in the toilet, told him to stop doing that, move away from the toilet and close the door. This explanation I find is highly implausible. It makes no sense that the family service worker could have so totally misunderstood what she heard the mother scream.

[80] On February 14, 2020 the society nurse again attended at the home and the mother told her AI had dropped the baby on the floor. The nurse questioned if the baby had fallen out of the crib. The mother agreed to do that. However, the mother denied the baby fell out of the crib and in her affidavit deposes that the society nurse misunderstood her and she only said that AI dropped food on the floor. Again, this appears to be highly unlikely as according to the society nurse, the mother said she checked the baby head to toe to make sure she was not hurt.

[81] The mother reported that while she was in the bathroom, she heard a crash and found AI had pulled down the shelving in the kitchen. She did not state when this happened.

[82] On another occasion the society nurse noticed that the playpen the society had purchased was destroyed and she witnessed AI kicking and pulling it. There was no explanation as to why the parents had not been supervising or stopping him.

[83] On March 11, 2020 the society worker received a telephone call from the father that he had left at 2:00 a.m. stating that he had received a voicemail message from the Hospital for Sick Children that AI had been treated for a cut finger and asked the society worker to check on him.

[84] The society worker attended unannounced that day. The mother advised that she had been out and the maternal grandmother was watching the children. The maternal grandmother room with the baby and AI was in his room alone. She said that he closed a cabinet on his finger and as a lot of skin was cut she took him to the hospital. No stitches were required and the finger was bandaged and she was given an ointment.

[85] However, in the mother's affidavit, she provides a completely different version of this event. The mother states that her mother was playing with AI and he caught his finger while practicing putting his toys away. I find the initial version of the accident to be more plausible and raises a concern as to why a child who has autism and serious behavioural issues would have been left alone. It is also not clear how he could have explained what happened if he is non-verbal.

[86] The medical note from the Hospital for Sick Children confirms this was a minor cut. There is no explanation as to what time of night this happened. This is also concerning as the father was called at 2:00 a.m. and the doctor's note is written at 4:14 a.m. It may be unimportant but some explanation was required.

[87] In November 2019, the mother complained to the society that the father slapped AI on the back of the head because he was making too much noise. The mother advised the family service worker as she wanted the society to make the father stop. The father denied slapping AI but admitted that he used to physically restrain him.

[88] In December 2019 the mother reported to the society that the father had pushed AI and he fell out of the bathtub. Despite these reported concerns the mother in January was telling the society she could not handle AI and the father should take him.

[89] In summary, these children have been left unsupervised by both parents at various times. On some occasions there had been physical injuries but on the other occasions there has been the risk the injuries could have occurred.

7.1 (d) Risk of exposure to domestic violence

[90] There has been ongoing verbal conflict between the parents to which the children have been exposed for as long as the society has been involved.

[91] Both parents have made reports to the society. On numerous occasions the police have been called due to reports from neighbours about yelling or things being thrown. The conflicts revolve around the mother's accusations that the father has a mistress who is now pregnant with his child, financial issues and the mother complaining that the father does not help her care for the children.

[92] Although the risk is now mitigated as the father is facing criminal charges and is prohibited from contact with the mother, there is a lack of any acknowledgement or insight into the harm done to children witnessing domestic conflict.

[93] The nature of the relationship between the parents is unclear. For example, despite the mother alleging that the father lied to the society, the police and the hospital about her threatening to harm herself and the children, upon release from the hospital the parties continued to reside together.

[94] When the society worker attended at the home on January 7, both parents were making an effort to communicate calmly. They stated they wanted to work on resolving their marital issues and would be starting marriage counselling at the mosque.

[95] The next day, the father was arrested for allegedly assaulting the mother. This is the first time that the mother has made any allegations of physical harm.

[96] Despite all of the mother's accusations that the father hit and slapped AI and did not properly supervise him, she continued to ask the father to care for AI.

[97] On January 31, the mother asked the society worker if the father wanted to return home. The society worker told her she needed to focus on herself and the children.

[98] The mother needs to resolve her feelings and relationship with the father. The mother needs to obtain counselling to understand issues around domestic violence and the impact on the children. Until she does so and despite the father's current inability to have contact with her, the children will remain at risk of yet again being exposed to the parent's marital conflict.

7.1 (e) Risk to AI of his educational needs not being met

[99] There have been ongoing complaints from the school about the mother's inability to ensure that AI attends school consistently and concerns that she does not follow through with obtaining assistance for his special needs.

[100] AI commenced school in September 2019. According to the family service worker, both parents advised her that they had informed the school that he had autism. However, the family service worker was informed by the school principal that neither parent told them about AI's autism and when specifically asked about if he had any issues the school needed to be aware of the parents said, no.

[101] In her affidavit, the mother deposes that the father registered AI for school so she assumed he told the school about his special needs. When she found out he had not, she advised the school. There is no information about when this happened and it contradicts what the school told the society.

[102] In mid-November the mother advised the family service worker that AI was only attending school half-days at the request of the school as the school could not accommodate his behaviour. She also stated that the child was home as she was sick and couldn't take him to school. The mother also reported that she had called the police on the school staff but was unclear about what.

[103] The family service worker asked if the mother wanted her to follow up with the school staff and with the mother's permission, she did so.

[104] The school reported an entirely different scenario. At the beginning of the school year, the father had been bringing AI and that had worked out. But when the mother started to bring him he either did not attend or was late, often not arriving until 10:00 a.m.

[105] The school advised both parents that AI needed to attend school consistently as when he did attend, he made small gains. The school advised the parents that AI needed to attend consistently for 2 weeks. When that did not happen, the principal suggested, that to make it easier for the parents, who were not getting him to school on time, that he attend half-days in the afternoon.

[106] The school principal reported that the mother had called police on staff. She was late picking up AI for lunch and he was in the office. He was crying, screaming and yelling which was common behaviour for him. When the mother arrived, she alleged that she (the principal) has hit him. When speaking with the police the mother's story about who hit AI kept changing. The mother allegedly swore, yelled and screamed at the principal and office staff and the mother was warned that if such behaviour continued, she would be issued a no trespass letter.

[107] In late November and early December, AI's school attendance continued to be problematic. The family service worker tried to assist by recommending that the father drop AI off at school and the mother pick him up.

[108] The mother stated that she would not be attending school until the school had a full day program for him. The father took the position the issue of school attendance was the mother's problem.

[109] The mother stated that it was too hard for her to take and pick up AI from school as the school was 3 kilometres away. According to the family service worker, her Google search showed the school was only 1 kilometre away. The mother did not

explain why if her mother was home to care for the baby, she could not walk or take public transportation or why she was always late.

[110] Towards the end of December, the father rearranged his work schedule and took and picked up AI from school where he was then attending on a full-time basis.

[111] However, by mid-January, AI was again not attending school. The mother claimed that she was ill but no doctor's note was provided.

[112] The school principal called the family service worker as an Identification, Placement and Review Committee ("IRPC") was planned for the following month to identify AI and get him on a list for a special school placement. According to school policy, if a child was absent for 15 consecutive days he is automatically withdrawn from school and the IPRC process would need to begin over again.

[113] In order to avoid AI being classified as withdrawn from school due to his missed attendance, the society arranged for a taxi to take and pick up AI from school for the week of January 20.

[114] On January 29, the school advised that AI had again not been attending school. The school had no contact with the mother, whose voice mail was always full.

[115] During the month of February, the child did not attend school for the first three weeks, then attended on one occasion for one period and attended another time but was late. The school had been trying to reach the mother as it required her signature for the IRPC that was scheduled for March 10.

[116] The school principal advised the family service worker that AI was still not attending school in March. The IRPC had taken place on March 11 and AI received an exceptionality designation and special school placement but that the placement would not start until the next school year. The school required the mother's signature to indicate her agreement with the placement. The school staff had been trying to reach the mother, but her voice mail continued to be full.

[117] In summary, the mother rarely took AI to school. He only attended regularly for the week of January 20 when the society arranged for his transportation or for 2 weeks when the father drove him. The mother neglected to make arrangements for him to attend even though she had been advised that his IPRC was in jeopardy. She did not remain in contact with the school and it is unclear if she ever provided her consent to the IPRC recommendations thereby jeopardizing AI's placement in a special school next year

7.1 (f) Conclusion

[118] Despite the society's involvement since November 2019 and despite the assistance of the family service worker and the society's infant nurse specialist, the risks to both children have remained. The mother has been unable to provide proper supervision of the children, meet their physical and medical needs, keep them safe or meet AI's educational and special needs. She has not shown any understanding of the society's protection concerns and has not taken any steps to mitigate those concerns.

[119] Despite the recent psychiatric assessment stating that the mother has no mental health issues, the mother's presentation during home visits by the family service worker and the society infant nurse specialist and information from the hospital at the time of the baby's birth and from the school are cause for concern.

7.2 Can a supervision order mitigate the risks?

[120] Having found that there are reasonable grounds to find that the children are at risk of harm, the next stage of the inquiry must assess whether or not a supervision order would be adequate to mitigate the risks.

[121] Although individually some of these concerns may appear not extremely serious and manageable, despite the society's involvement since May 2019, the risks to both children have remained.

[122] The mother has been unable to provide proper supervision of the children, meet their physical and medical needs, keep them safe or meet AI's educational and special needs.

[123] The mother deposed that the reason the children were removed from her care was due to the minor cut that AI's sustained on March 11 and that she took him to the hospital to make sure his finger was not broken.

[124] She does not acknowledge or show any understanding of the society's protection concerns about the risks to the children and has not taken any steps to mitigate those concerns.

[125] Counsel for the society submits that in view of COVID-19, the society cannot provide the level of supervision that it might otherwise have been able to provide. Many of their staff are working remotely. The society is not conducting home visits and only checking on families by telephone or using technology. The society is only responding in person to urgent and emergency calls.

[126] As the schools and daycares are closed there are no third parties that can oversee the well-being of children that are under the society's supervision. There are no community services available to assist caregivers.

[127] I am prepared to take judicial notice of these facts.

[128] These circumstances then require a court to determine if a parent can be relied upon to meet the needs of the children with minimal oversight from the society and with no other community supports. This would require a parent that is willing to be open and honest with a family service worker regarding any issue or concerns and be available to communicate by telephone.

[129] The mother cannot be relied upon. She has not been open and honest with the society. She has changed her version of events with respect to safety issues and how the children incurred injuries. She has a history of not maintaining contact with the school.

[130] As of March 6th, the family service worker has had increasing difficulty remaining in contact with the mother who has refused to answer her door when the family service worker attended unannounced. The family service worker had been unable to reach her by telephone as her voice mail was full.

[131] On March 12, the family service worker requested assistance from the police to gain access to the mother's home. The family service worker attended as she needed to obtain an explanation as to the child's injury and hospital attendance. AI was sitting naked on the couch. The family service worker had trouble keeping the mother focussed as all she wanted to talk about was the father. The mother complained the father had not given her money, that he was lying about his income and she wanted him to have a visit with AI.

[132] The mother also complained that she had no food and that the society had not given her any money. The family service worker explained that the day she requested money, the worker had observed that she had a lot of food and diapers and she had told her that she spent \$300 on food and supplies. The family service worker asked the mother if she would open the door for her if she returned the next day with a food voucher and the mother said she would.

[133] On March 13, the family service worker made an unannounced visit to drop off the food voucher, the mother did not open the door despite the family service worker calling from the hallway and leaving a voice mail.

[134] Shortly after the mother called the family service worker's supervisor leaving a message that she would not allow the family service worker into her home as she was not being treated fairly. She stated that she would work with another society worker.

[135] Although the society agreed to transfer the file to another worker, the mother did not specify her concerns with the worker. The mother also had conflict with the school and made vague allegations about staff hitting AI. At the time of FI's birth the mother had also made complaints about the hospital staff not treating her fairly and called the police.

[136] The mother has proposed as part of her plan that if necessary, she would agree to a term of supervision that her mother help her.

[137] The maternal grandmother has been in the home since May 2018. Despite her presence, it is unclear what role she has taken. For example, if she was helping the mother then why could she not care for the baby while the mother took and picked up AI from school. There is no evidence of her shielding the children from the verbal conflict between the parents, there is no evidence that she took an active role in establishing a proper routine or structure in the home or was able to ensure that the children ate properly or attended for their medical needs.

[138] The mother has at various times told the family service worker that the maternal grandmother was moving out.

[139] The mother has provided different versions of how AI hurt his finger while being in the care of the maternal grandmother.

[140] I do not find that the maternal grandmother would be a protective factor if the children were returned to the mother's care as she has not filled that role while the children were in the mother's care.

[141] I find that there are no terms of supervision that at this time would address the multiple risks that these children have been exposed to in the past and will continue to be exposed to if left in the same circumstances they were in before they were removed. Now there would of necessity be even less assistance and supervision available.

[142] The society has been involved on a voluntary basis attempting to assist the mother in meeting the needs of the children. She has not been able or willing to utilize that help and has not followed recommendations that were made for community services when those services were available.

7.3 Should the children be separated and only FI returned to the mother's care?

[143] There is no doubt that the mother has had much more difficulty managing AI's care given his special needs. She has on many occasions asked that he either be placed in the father's care or in foster care.

[144] Counsel for the mother submitted that if the court finds that both children cannot be safely returned to the mother's care that the baby be returned. Although there is less risk with respect to the baby, I find that there are still risks due to the mother's apparent inability to gain any understanding of the need for a routine and structure for feeding, her delay in ensuring the baby had his vaccines and her overall inability to supervise and ensure there is a safe environment.

[145] Most importantly the mother's lack of candour and honesty with the society and her lack of cooperation creates a situation where close supervision would be necessary. As such close supervision is not available during this COVID-19 pandemic to place the baby with her would place him at risk and a supervision order would not alleviate that risk.

7.4 Can the child or children be placed with the father?

[146] I have considered if either or both children could be placed with the father. There are concerns about the father's insight into the society's protection concerns. When made aware of those concerns, he has either not taken any steps to address those concerns or has minimized the concerns. Most particularly, he did not present about being concerned about AI's accident resulting in a portion of his thumb being amputated or his lack of school attendance.

[147] Despite his bail release terms only preventing him from contact with the mother, he did not make requests to see the children.

[148] Although at times he has indicated he would care for AI, at other times he has stated he could not do that or he would only care for him if he had a court order. He has not presented a plan.

[149] At the court hearing he stated orally that he now had accommodations and could care for AI but provided no details. He was advised to present any plan to the society and to file his pleadings.

7.5 Temporary Access

[150] *Subsection 94 (8) CYFSA* provides that where an order is made under clause (c) or (d) of subsection 94 (2), that is, a child is placed with another caregiver or in society care, the court may order access on any terms that it considers appropriate.

[151] In determining what order is appropriate, the court should consider the paramount purpose of the Act, being the best interests, protection and well-being of children and the secondary purposes of maintaining the integrity of the family unit, assisting families in caring for their children and recognizing the least disruptive action consistent with the best interests of the children. In assessing best interests, the court should consider the relevant factors set out in *CYFSA* subsection 74 (3).⁸

[152] The society in accordance with its current policy due to COVID-19 has proposed that access be in its discretion.

[153] Due to COVID-19, supervised access at the society's office is no longer available. There are no drivers available that usually transport children to and from access visits. The society foster parents do not wish access due to concerns about COVID-19 transmission. The safety and well-being of society staff, foster parents and their families and other children in the home of the foster parents must also be considered.

[154] The mother has not made any proposals for access that would alleviate concerns about the transmission of COVID-19 or deal with the practical realities of the current situation.

[155] The society is prepared to facilitate access by telephone and electronic means, such as Facetime, Skype, What's App and so on.

[156] When children are older, although communication through telephone or electronic means is not ideal, it does provide some meaningful contact. I agree with counsel for the mother that for younger children, the society's policy means there will be no meaningful contact for parents to their young children who are in society care.

[157] With respect to infants and young children, the reality is that with the current restrictions, parents whose children have been removed from their care will have no face to face contact and any limited electronic contact will not enable those parents to bond with their children.

[158] However, the lack of access is not a reason to return children to a parent or parents who by their conduct or circumstances are unable to provide a safe and risk-free home for their children.

⁸ *JFCS v. H.B.S.* [2012] O.J. No. 5055 (OCJ).

[159] An order for access in the discretion of the society will permit access restrictions to be lifted once the society is able to do so and will alleviate the need to return to court. I find the society is aware of its mandate and will facilitate face to face access when it is safe to do so.

8. Conclusion

[160] There will be an order as follows:

1. The children A.I. born... and F.I. born... shall be placed in the temporary care and custody of the Children's Aid Society of Toronto pursuant to section 94(2) of the *Child, Youth and Family Services Act*.

2. Access to the children shall be at the discretion of the Children's Aid Society of Toronto with regards to the nature, frequency, duration, location and level of supervision pursuant to section 94(8) of the *Child, Youth and Family Services Act*.

Released: April 2, 2020

Signed: Justice Roselyn Zisman