

## 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: *Catholic Children's Aid Society of Toronto v. V.O.*, 2019 ONCJ 377  
DATE: June 3, 2019  
COURT FILE No.: C56160/12

**B E T W E E N :**

**Catholic Children's Aid Society of Toronto**

***Applicant,***

**— AND —**

**V.O. (mother)**

**C.B. (father of N., S., C., and D.)**

**B.M. (father of L.)**

***Respondents***

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Before Justice Roselyn Zisman  
Heard on April 16 and May 17, 2019  
Reasons for Judgment released on June 3, 2019

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**Fatima Husain.....counsel for the applicant society**  
**Mira Pilch ..... counsel for the respondent mother V.O.**  
**Deborah Stewart..... counsel for the respondent father B.M.**  
**No appearance by respondent father C.B.**

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## **Decision on temporary care and custody motion**

**Zisman, J.:**

### **1. Introduction**

[1] This is a temporary care and custody motion pursuant to section 94(2) (d) and (b) of the *Child, Youth and Family Services Act* ("CYFSA").

[2] The Catholic Children's Aid Society of Toronto ("the society") seeks an order that the child L.M.M.O. ("L.O.") born [...], 2018 be placed in the temporary care and custody of the society pending final disposition of the Protection Application.

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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] The society seeks an order placing the children, N.R.O. (“N.O.”) born [...], 2001, S.F.B.O. (“S.O.”) born [...], 2002, C.L.B.O. (“C.O.”) born [...], 2004 and D.L.B.O. (“D.O.”) born [...], 2006 in the temporary care and custody of their mother subject to the supervision of the society pending final disposition of the Protection Application on terms and conditions set out in the Notice of Motion.

[4] It is the position of the mother that the child L.O. should be returned to her care subject to terms of a temporary supervision order and that the Protection Application regarding her older 4 children be dismissed. B.M. who is the biological father of L.O. supports the mother’s position.

[5] V.O. is the biological mother of all of the children. She also gave birth to another child L. M.O. born on [...], 2019. The respondent father B.M. is the biological father of that child. A warrant was issued to place the child in a place of safety. That child is currently placed with her sister L.O. in the same foster home. Her temporary care and custody motion has been adjourned on consent for the outcome of this temporary care and custody motion.

[6] The respondent father C.B. lives in Newfoundland. In August 2011, the mother moved to Ontario and left the children with him. A few months later the children also moved to Ontario and C.B. has not had any contact with the children since that time. Service on him of these proceedings is still outstanding.

[7] The father B.M. is represented by counsel Deborah Stewart, who was not available on the motion date. He nevertheless consented to the motion proceeding.

[8] The temporary care and custody motion commenced on April 16, 2019 when the court heard the oral evidence of Dr. Emma Cory and then submissions were heard on May 17, 2019.

## **2. Prior history of involvement with children's aid societies**

[9] The parents V.O. and her ex-partner C.B. were involved with the child protection society in Newfoundland from October 2003 to 2011.<sup>1</sup>

[10] The concerns involved cleanliness of the home, proper hygiene for the children, a large number of animals in the home including rats that were not being properly cared for or cleaned up after, concerns regarding D.O. being underweight and the mother’s failure to follow through with medical professionals, the children not being fed properly, concerns about the bond between the mother and the children, concerns about drug use by the father and the mother’s possible drug use, lack of attention to the children’s basic emotional and medical needs, concerns about some of the children’s developmental delays and school attendance. Neither the mother nor C.B. were willing to work with various service providers or the society workers or follow through with services or recommendations. In 2009, there were concerns about the use of physical discipline by C.B. and he was required to leave the house.

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<sup>1</sup> Some but not all of the records from Newfoundland have been received. The records that have been received include the warrant to apprehend the children dated sworn November 28, 2006.

[11] The children were removed from the care of the mother and C.B. from the end of November 2006 to September 2007 and again from March 2010 to January 2011. After both removals the children were returned to the parents on supervision orders.

[12] The issues were chronic and repetitive. But when the parents showed some improvement either the society did not proceed to remove the children or removed them and then the parents began to co-operate so the children were returned. Then the same cycle of neglect began again.

[13] In August 2011 the mother returned to Ontario and the children followed a few months later. The society in Newfoundland asked the Catholic Children's Aid Society of Toronto to become involved with the family as their supervision order did not expire until January 5, 2011.

[14] A Protection Application was commenced in this jurisdiction by the society in March 2012 due to ongoing concerns around neglect of the children including, poor school attendance, poor hygiene, failure to address their medical needs including N.O.'s apparent depression and the children's lack of health cards.

[15] However, the family then moved to the Region of Peel and the file was then transferred to the Children's Aid Society of the Region of Peel ("Peel CAS"). Peel CAS was involved from June 2012 to February 2013 as the mother then moved back to Toronto.

[16] The referral letter from Peel CAS indicated that the mother made some improvements, but issues around the home environment and engagement with the society workers remained an issue. The mother did not address N.O.'s medical needs in that his depression and ADHD medications were being neglected, the leg mass of S.O.'s leg was not addressed as the mother still did not have a family doctor and D.O.'s speech issues were still unaddressed.

[17] In February 2013 the society began working with the family to address these many issues. Based on the family service worker's interviews with the children and the ongoing reports from the school, the society determined that the children were not attending school regularly, that the children were hungry and they were coming to school smelling and wearing dirty clothing or clothing that was inappropriate for the weather. The mother was not addressing the children's learning or developmental needs. The mother had not continued N.O.'s medications and both C.O. and S.O. had medical issues that were not being addressed.

[18] Despite the mother agreeing to work with a parent support worker she immediately cancelled that service. Further, despite financial support from the society and the school, in the form of food vouchers, clothing and toys for the children, furniture, mattresses and referrals to supportive services, the issues continued throughout the school year and into October 2013.

[19] In November 2013 the mother moved and the society assisted her with new beds and furniture. The children were registered in a new school but the problems with absences and lateness again reoccurred. The mother reported that the different school

buses for the children arrived at the same time and she could not manage to have the children ready.

[20] The new school also reported concerns about the mother avoiding them and not working with them. The school reported that the children came to school hungry, not properly dressed and dirty and with poor hygiene and grooming.

[21] In December 2013, S.O. reported to the school social worker that her mother was hitting her including with a belt and that she wanted to return to her father in Newfoundland as she was not hungry there. The society rejected this plan due to concerns about C.B.'s substance abuse and physical discipline of the children.

[22] S.O. reported that the mother was hitting all of the children. The mother denied hitting the children. S.O. also reported that the mother went out all night and returned acting weird and then slept until the afternoon.

[23] In about January 2014 the maternal uncle M.O. moved into the mother's home to assist her with childcare.

[24] In February 2014, at the request of S.O. and C.O.'s school, those children were transferred to the school N.O. was attending. However, the same concerns about poor school attendance and hygiene continued. In March 2014, the mother was being threatened with eviction. The society assisted the mother was rent money as she wished to move.

[25] In July 2014, the parties consented to a termination of the supervision order as some progress had been made.

[26] For most of the next school year, the children remained in the same school which was an improvement but concerns again began to escalate. N.O. had poor school attendance, poor hygiene, poor socialization and did not complete his homework. N.O. also complained about being hungry.

[27] By January 2015, the school social worker reported that the children had "shut down" and that C.O. appeared to be particularly traumatized and their school attendance was described by the principal as "ridiculous".

[28] The family was referred to the Hincks-Dellcrest Centre for services but the mother did not follow through. The mother refused the services of a home worker or a parent support worker. The mother did not follow up with school meetings. The children still did not have a family doctor and the school principal had taken to washing the children's clothes by hand at school.

[29] Between June and September 2015, the society has difficulty finding the family as it appeared they moved. In September N.O. began high school and the younger children began attending a new school but attendance soon again became an issue.

[30] The file was transferred to another family service worker, Mr. McMillan, this being the fifth worker, as the mother became hostile to the previous worker.

[31] Over the next several months, the mother became hostile both to the school and the society. She refused to let the children speak to society staff “without a child advocate present” and began to cancel or refuse home visits.

[32] The school reported that the three younger children had become very withdrawn. Although they still came to school dirty, smelling and unkempt, they no longer complained of being hungry and their attendance had improved.

[33] In March 2016, the society again commenced a Protection Application and in April 2016, the file was transferred to yet another family service worker, Mr. D’Souza.

[34] Mr. D’Souza noted that C.O. appeared to be pale and sad. C.O. reported that she wore the same pants as she could not find a clean pair at home. C.O. reported that there was food at home and she was not hungry. But the teacher reported that the school provided C.O. with snacks as she did not always bring lunch to school.

[35] After examining the children’s abysmal school attendance, the society amended its Protection Application and brought a motion to seek an order that the children be brought into care.

[36] The motion was adjourned to permit the parties and counsel to meet. The mother began to comply with basic requirements such as having the children seen by Dr. Rammo for a medical examination and improving the children’s school attendance. S.O. was seen by Dr. Greenwald for the growth on her leg. However, the mother was opposed to all involvement of the society and wished the Protection Application to be withdrawn.

[37] In October 2016, all of the children changed schools. Both S.O. and N.O. attended a new high school and their attendance improved. Although there were still reports of concerns about the children’s grooming and hygiene this had also improved. N.O. had been volunteering in the school kitchen as there was a concern that he was not eating enough but he began stating that he did not want to continue.

[38] The school reported that although C.O. sometimes withdraws from class and goes into the bathroom to hide there, the school was working with her and she did not disclose anything of concern. The school attendance for C.O. and D.O. had improved and there were no behavioural problems and they had made friends.

[39] The family was referred to the Griffin Centre for service.

[40] In June 2017, the society brought a motion to withdraw its Protection Application that was granted on September 6, 2017 after a police check was completed on the maternal uncle.

### **3. Events leading to new Protection Application**

[41] In March 5, 2019 the society received a referral from a nurse at the Humber River Regional Hospital to report that L.O. born [...], 2018 had been admitted to the hospital for failure to thrive. The child was born weighing 3.1 kg but a one years old only

weighed 4.2 kg. The child was developmentally delayed, not gaining weight, not standing, not sitting, could barely roll over and appeared quite emaciated.

[42] The nurse further reported that she was concerned about the mother's presentation as she appeared agitated that the child needed to be admitted to the hospital and said that the child was fine and just a little underweight. The mother threatened not to eat and she would hold the hospital liable if anything happened to the child. This was a concern as the mother was 8 months pregnant.

[43] Aida Macedo, the society intake worker was assigned to the case. She spoke to the child's paediatrician Dr. Greenwald who advised her that he had last seen L.O. on February 28, 2019 and that she was presenting as "failure to thrive" and had developmental and growth delays.

[44] When asked why he did not report his concerns or direct the mother to the hospital immediately he advised that he did not feel it was a medical emergency. He had coordinating with Humber Regional Hospital for the child to be seen on Monday March 4<sup>th</sup> and if the mother had not taken the child he would have reported to the society. He further explained that the mother was appropriately concerned about constipation but had no insight into the other delays. He stated that he did not report to the society or the police as there could have been a medical explanation for the failure to thrive.

[45] On March 7, 2019, Ms Macedo and Detective Constable Knill and Detective Constable Diaz, conducted a joint interview with the mother.

[46] The mother reported the following:

- a) When L.O. was about 3 or 4 months old she was told by her family doctor Dr. Rammo that her weight was a little off and she was referred to a pediatrician Dr. Greenwald who told her that L.O.'s weight was average;
- b) When L.O. was 6 months old she went back to see Dr. Rammo and told him about the child's constipation problems and he told her to try to remove certain foods from her diet;
- c) She called Dr. Greewald's office before Christmas to try to get an appointment but was told there was no appointment until March. She then called and obtained an earlier appointment. On February 28, 2019 Dr. Greenwald told that the L.O.'s weight was not where it should be and he prescribed a laxative;
- d) She received a call from Dr. Greenwald's office to take the child to the hospital on March 4<sup>th</sup> which she did along with her brother. She tried to get the hospital to take a stool sample. L.O. also had an x-ray, ultrasound, urine and blood samples done. Her test results showed high levels of calcium;
- e) She was upset when told that L.O. needed to stay overnight at the hospital because she was worried about the other children but she had worked things out with her brother;

- f) L.O. eats well and the only problem occurred when she switched her formula and her constipation problems began;
- g) L.O. was tiny because her parents are tiny because they have thyroid problems. Bu the mother confirmed that L.O. was checked and she did not have a thyroid problem;
- h) She had not been concerned about L.O.'s weight or development as Dr. Greenwald told her that L.O.'s weight was off one month old and Dr. Rammo never said that he had any concerns before this;
- i) She only saw Dr. Greenwald once when L.O. was 3 months old and again last week;
- j) She was told that L.O.'s muscles are weak and she may need therapy. She was told that L.O. may have a condition dealing with poor muscle control; and
- k) She and B.M. were L.O.'s primary caregivers.

[47] On March 7, 2019 Ms Macedo along with the police officers met with Dr. Emma Cory from SCAN. Dr. Cory reviewed the medical information. Dr. Cory advised that L.O. was presenting at the weight of a 1 month old although she was 1 year old. The hospital were still running tests to determine if there was a medical reason for the lack of weight gain and lack of development.

[48] On the same day, Ms Macedo went to see L.O. in her hospital room and observed that she was extremely underweight, had poor muscle tone, could not lift her head or move the rest of her body. She was not making sounds or babbling. Ms Macedo took photographs and a short video. One of the photographs was attached to her affidavit.

[49] When the mother arrived a short time afterwards, she refused to speak to Ms Macedo. The mother also refused to sign any consents for the society as she said that she had signed consents for the hospital to obtain any necessary records.

[50] Both the police, Ms Macedo and another society worker Gabriela Frigerio followed up with the schools that the other children attended. The children were also interviewed.

[51] Based on the information obtained, the society became aware that the children S.O., C.O. and N.O. attended the same high school. S.O. and C.O. were rarely attending school and both were presenting as withdrawn. They had no incentive or friends and do not get along with peers, have poor hygiene and present as unkempt.

[52] There had been a meeting in February 2018 with the Attendance Board to address the attendance issue but nothing had changed.

[53] C.O. was observed by the school to have selective mutism. She was not attending gym and had been found hiding in the change room where she sometimes

hides all day. The mother did not agree with the school's concerns but she did agree to consult with the family physician. The school did not know if she had done this.

[54] N.O. was not eating well and so the school had him attend a culinary program at the school, but he failed the co-op. He was reported to have ADHD and anxiety. He had not obtained any school credits for that semester.

[55] D.O. was in Grade 5 and there were no concerns about attendances or lateness. He has a learning disability and is in a special education classroom where he obtains extra help.

[56] Ms Frigerio reported that the attendance counsellor advised her that when she went to speak to N.O. he "threatened" her not to speak with any children's aid society worker as they were "making problems" and accusing his mother of abusing his little sister. Both N.O. and S.O. made statements explaining why their little sister was so tiny and why she was in the hospital.

[57] The society issued its Protection Application on April 2, 2019. A temporary without prejudice order was made that day.

[58] The 4 older children were placed in the care of the mother under terms of supervision. The mother would not agree to the terms that required her to follow through with services for the children, including medical, dental, vision, speech and other needs if arranged and ensure that all of the children have a complete physical examination by April 30<sup>th</sup>. She would also not agree to sign consents for the release of information as requested by the society.

[59] A temporary without prejudice order was also made placing L.O. in the care of the society with supervised access to the parents at a minimum of once a week subject to her medical appointments.

[60] On April 11<sup>th</sup>, 2019 the matter was again in court. An order was made to appoint counsel for the older children.

[61] The mother filed her responding affidavit that day which contained letters from both Dr. Rammo and Dr. Greenwald. The society wished to obtain Dr. Cory's response to the information on those letters. It was agreed that the temporary care and custody motion would be heard on April 16<sup>th</sup> and Dr. Cory would testify.

[62] The court was also advised that the mother had been charged criminally with criminal negligence causing bodily harm, not providing necessities and endangering life. The mother was released on her own recognizance with conditions to have no contact, except with court order or the society's consent with L.O. She was also not to be alone with any child under 18 years old except as supervised by someone over 18 years of age.

#### **4. Further medical evidence of the Humber River Regional Hospital, SCAN report and evidence of Dr. Emma Cory**

[63] Dr. AlShabanah, a pediatrician at the Humber River Regional Hospital, prepared a consultation report stating that L.O. was admitted to the hospital with a concern about severe failure to thrive and that on admission, there were concerns about her developmental delay. As one of siblings has developmental delay, the mother was questioned about this but she “was very hesitant” to provide information. Dr. AlShabanah explained to the mother the concerns and that the child required inpatient care, he noted that, “I believe that mom has a lack of insight about what is going on to her daughter and for the best interests of the child” and the society should be involved.

[64] The summary report from the Hospital for Sick Children indicated that L.O. had “failed to gain weight adequately in the community” and had been admitted to the hospital to better understand why she has not grown appropriately. The summary concludes that, “After extensive investigation, a medical cause was not identified for her failure to grow it is thought to be due to inadequate intake.”

[65] After a *voir dire* Dr. Cory was qualified as an expert witness in the area of pediatrics and in the area of pediatric assessment of feeding and growth in young children.

[66] Dr. Cory testified that on admission to the hospital L.O., at 12 months had the appearance of an infant. Her weight was profoundly abnormal. She was severely underweight in all of her growth parameters, her weight, her length and her head circumference. This indicated that something very significant occurred with her nutritional intake and she was also developmental delay. In her opinion, the developmental delay was likely caused by or significantly contributed to by her severe state of malnutrition.

[67] There were extensive tests performed to look for alternative causes for the developmental issues other than her nutritional state. L.O. was assessed for possible genetic causes for the developmental delay that were ruled out. She was assessed by endocrinology who have expertise in hormone systems within the body and in the regulation of calcium, nephrology who have expertise in kidneys and gastroenterology.

[68] L.O. had high calcium levels so she was tested to determine what caused those levels and she received some treatment for this condition. Her levels normalized but the cause remains unclear. However, in Dr. Cory’s opinion the high levels of calcium are not the cause of her malnutrition or her failure to thrive. Whether they played a minor contributing role remained to be seen.

[69] Dr. Cory explained that L.O. has been diagnosed with severe failure to thrive. The term failure to thrive is just used as a descriptive term meaning that she had not gained weight or grown at the expected rate according to the norms her age.

[70] During L.O.’s hospital stay she gained a significant amount of weight. In her 19 days in the hospital she gained an average of 33 grams a day, the average weight gain for a 12 month old infant would be 7 grams a day. Dr. Cory testified that this supports the diagnosis that there is no medical condition that is causing her severe failure to thrive because with appropriate caloric intake she grows very well.

[71] When seen again at the hospital, on April 15<sup>th</sup>, Dr. Cory testified that L.O. was now the average weight of a 2 month old and the average length of a 3 month old. She looked like a very young small infant.

[72] Dr. Cory testified that the long term prognosis was concerning. Dr. Cory testified that:

L. has at this point in time severe malnutrition. She's showing improvements in her weight gain, both in hospital and in the foster care environment and she's showing improvement in her head growth, in her head circumference growth so her head circumference has shown some recovery over this last month when she's been receiving appropriate nutritional intake. Having said that she's very developmentally delayed so her prognosis from a developmental perspective I think is, wait and see. That she needs appropriate nutrition and she needs appropriate developmental supports and stimulation and my hope is that she'll experience some recovery. Most infants that I see do display some recovery in their developmental abilities. I just don't think that she's going to go back to being normal. I think it's too soon to say that. Infants that I have followed historically with severe malnutrition that has taken place in early infancy in my experience tend to be a bit more likely to have developed long term developmental consequences.

I don't think it's possible to come to a conclusion at this point in time, but I feel concerned for how she will do developmentally. ....when I talk about development, I mean all spheres of development so that includes gross motor, fine motor, social or language development and ability and kind of higher cognition so her overall intellect.

[73] Dr. Cory was provided with a copy of the letter from Dr. Rammo attached to the mother's affidavit that stated that the mother had brought the child in for regular check-ups and was up to date on her vaccinations. He further stated that the mother was appropriately concerned and followed up with the child's low weight and constipation and concludes that there is "no evidence of willful neglect."

[74] Dr. Cory testified that she would not comment on the issue of "willful neglect" as that is not a medical diagnosis but a conclusion made by a child protection agency or the court.

[75] Dr. Cory also reviewed the medical records from Dr. Greenwald but it only appeared that he had seen the child at 3 months and then again at close to 12 months.

[76] Dr. Smith and Dr. Archambeau also worked on the SCAN team. They summarized the records of both Dr. Rammo and Dr. Greenwald and reported their concerns to the society. Dr. Cory's reviewed the summary and the actual notes.

[77] Dr. Cory confirmed that there were a number of times that Dr. Rammo encouraged or recommended that the parents follow up with the pediatrician but unfortunately he did not monitor the child more frequently himself.

[78] Dr. Greenwald's records indicate that he saw the child when she was 3 months due to concerns about her weight and reported that "she is continuing to gain weight and maintain her percentiles" and that he wished to see her again in 6 weeks.

[79] Dr. Rammo's notes indicate that at the 4 month check-up he was told there was an upcoming appointment with the pediatrician and then again at the 6 month check-up he was told that the parents will follow up again with Dr. Greenwald.

[80] There is no evidence that the mother followed up with Dr. Greenwald until L.O. was almost 12 months. Further, as Dr. Cory pointed out in her evidence, a review of the child's growth chart indicated that she was not gaining weight and she was falling below her percentiles.

[81] Dr. Cory explained that the information provided in the medical notes about the child's developmental stages would have been provided by the parent and she did not know if the doctor would have confirmed this information with his own examination.

[82] Dr. Cory met with the mother to provide her with the summary of the child's care in hospital and the conclusions about her weight gain and the level of concern about her growth.

[83] The mother made comments about her concern that the child's constipation had caused her growth concerns. Dr. Cory told the mother that the constipation was a secondary issue and that it probably developed because the child's intake was poor. It was a sign that she was not getting enough calories or enough food to meet her growth needs.

[84] Dr. Cory also testified that although the mother stated the child was constipated, when she was admitted into the hospital she was not significantly constipated.

[85] The mother also expressed her upset with the doctors who had cared for L.O. prior to her admission into hospital.

[86] Dr. Cory expressed concerns about the length of time that it took for L.O. to have a further medical evaluation or admission to the hospital. Dr. Cory testified that if a medical provider were looking at the pattern of the child's growth plotted in a growth curve, as was provided to the court, with her weight, height and head circumference, they should have been very concerned at an earlier point in time.

## **5. Evidence of the mother**

[87] The mother filed an affidavit sworn April 10<sup>th</sup>, 2019. In that affidavit she deposes that her previous involvement with the child protection society in Newfoundland from 2003 to 2011 was primarily due to the behaviour of the children's father with whom she is no longer involved.

[88] The mother deposes that with respect to her involvement with this society, the children have always remained in her care and that she worked collaboratively to ensure that the children's health and safety were ensured. The mother points out that the previous Protection Application was withdrawn on August 7, 2017 without a finding being made.

[89] The mother deposes that her brother has been a great assistance to her in caring for the children.

[90] The mother states that she attended regularly with L.O. with Dr. Rammo and he felt that she showed appropriate concern and follow up regarding L.O.'s low weight and constipation.

[91] The mother states that Dr. Rammo referred her to Dr. Greenwald and she took L.O., there was no concern and Dr. Greenwald did not recommend any further investigation. The mother deposes that on her own she followed up with Dr. Greenwald because she was concerned about L.O.'s development without Dr. Rammo suggesting this.

[92] The mother saw Dr. Greenwald on February 28, 2019 and deposes that he did not tell her to do anything differently and that he would be in touch with her to set up another appointment. The mother further deposes that on the morning of March 4<sup>th</sup> she received a call from Dr. Greenwald's office to take L.O. to the hospital.

[93] The mother states that she stayed at the hospital with L.O. from March 4<sup>th</sup> to March 28, 2019 and had "no idea that the hospital had any concerns about my care of L."

[94] The mother deposes that she was told that the doctors did not find a medical explanation for L.O.'s failure to gain weight. The mother states that she is aware that L.O. had hypercalcemia when she was admitted to the hospital and that subsequent to treatment this condition resolved and her weight increased. The mother points out that the society's affidavit rules out hypercalcemia as a cause of the child's failure to thrive but no report was filed.

[95] Subsequent to the mother's affidavit both Dr. Cory's report and her oral evidence rules this out as a cause of the child's failure to thrive.

[96] With respect to C.O. and S.O. the mother admits that they have missed classes but it is not due to her not sending them to school. The mother deposes that she is working with the school to improve their attendance. She states that C.O.'s attendance has improved but S.O.'s has not.

[97] She points out that D.O. is attending school and has an IEP. She denies that he has a speech impairment. She also denies that C.O. has selective mutism.

[98] The mother did not mention N.O. in her affidavit.

[99] The mother deposes that the society has not come close to establishing that any of her older children are at likely risk of harm in her care.

## 6. Legal considerations on temporary care and custody motion

[100] The legal test for a temporary care and custody motion is set out in subsections 94 (2), (4) and (5) of the *Child, Youth and Family Services Act (CYFSA)* that read 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.

[101] Before making an order, the court must also take into consideration the child's views and wishes, given due weight in accordance with the child's age and maturity pursuant to subsection 94 (11) *CYFSA*, unless they cannot be ascertained.

[102] 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. 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.<sup>2</sup>

[103] Pursuant to subsection 1 (2) *CYFSA* the court must choose the order that is the least disruptive placement consistent with adequate protection of the child.<sup>3</sup>

[104] The degree of intrusiveness of the society's intervention and the interim protection ordered by the court should be proportional to the degree of risk.<sup>4</sup>

[105] Subsection 94 (10) *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.<sup>5</sup>

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<sup>2</sup> *Children's Aid Society of Ottawa-Carleton v. T.* [2000] O.J. No. 2273 (Ont. Sup. Ct.).

<sup>3</sup> *Children's Aid Society of Hamilton v. B.D. and F.T.M.*, 2012 ONSC 2448 (Canlii).

<sup>4</sup> *CCAS of Toronto v. J.O.1*, 2012 ONCJ 269 (Canlii).

<sup>5</sup> *Family and Children's Service v. R.O.*, [2006] O.J. No. 969 (OCJ).

[106] At this early stage of the proceeding a society seeking a temporary order only has to demonstrate that it has reasonable grounds to believe that there is a protection risk for the child that justifies society intervention.<sup>6</sup>

[107] The onus of proof or criteria are the same when the society is requesting a non-removal order pursuant to subsection 94 (2) (b) *CYFSA* or a removal order pursuant to subsection 94 (2) (c) and (d) *CYFSA*. The issue to be determined in making the non-removal order under subsection 94 (2) (b) is whether or not the society has reasonable grounds to believe that there is a probable risk that the child will suffer harm if reasonable terms and conditions of a supervision order are not imposed.<sup>7</sup>

## **7. Application of legal considerations to the findings of fact**

[108] Counsel on behalf of the mother raised issues with respect to the society's reliance on hearsay in the affidavits filed on this motion. She also raised concerns about Dr. Cory referring to discussions or information she received from the foster mother or other third parties.

[109] On a temporary care and custody motion, the society is permitted to rely on evidence it considers to be credible and trustworthy. The hearsay evidence in this case is all from professionals such as the police, the school principals, teachers and guidance counselors or neutral third parties such as the foster mother. I find that the evidence presented at this stage is credible and trustworthy. The evidence is internally consistent, consistent with various documents and reports filed and is consistent with a pattern of behaviour by the mother regarding all of her children.

[110] At this early stage of the proceedings the views and preferences of the older children have not yet been ascertained as the referral for counsel to be appointed was made only very recently.

[111] Much of the evidence with respect to the risk of harm to them must be viewed in the context of the history of the lengthy involvement of the child protection society in Newfoundland, the brief involvement of the Peel society and the involvement of Catholic Children's Aid Society of Toronto.

[112] There has been a long history of ongoing neglect of all of the children's needs since 2003. The fact that the mother minimizes and blames the involvement on the behaviour of the children's father is significant and shows a remarkable lack of insight.

[113] It is clear that the mother does not acknowledge or take any responsibility for her lack of ability to meet the basic physical and emotional needs of her children. These children while in the care of the mother have a long history to inconsistent school attendance. The mother has a history of not following through with medical recommendations in the past or obtaining necessary services for her children.

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<sup>6</sup> *L.D. v. Durham Children's Aid Society and R.L. and M.L.*, 2005 CanLII 63827, 21 R.F.L. (6th) 252, [2005] O.J. No. 5050 (Ont. Div. Ct.).

<sup>7</sup> *Children's Aid Society of Halton Region v. Z. (T.A.)*, 2012 ONCJ 231 at paras 19 -20.

[114] While the mother appears to improve her parenting when the society becomes involved she quite quickly reverts to the same patterns of neglect.

[115] The fact that the society withdrew its most recent Protection Application without a finding does not provide evidence that the mother is now meeting the needs of the children. On the contrary, in hindsight it unfortunately indicates that it was not the right decision. Perhaps if the society and the court had remained involved L.O.'s needs would have been met.

[116] It also appears that the mother is attempting to dissuade the children from speaking to the society workers and attempting to encourage the children to have a negative opinion of the reasons for the society's current involvement.

[117] Given the ages of the older children and the fact that the school authorities at their respective schools appear to be aware of the needs of the children and have been in contact with the society, I accept the society's present position that the risk to those children can be adequately met if they remain in the care of the mother subject to the terms of supervision.

[118] With respect to the temporary without prejudice order, the mother would not agree to signing consents or agreeing to follow through with recommended services or arranging for a complete physical examination of all of the children. It may be that she was reluctant to agree to these terms without counsel. However, these terms will be part of the supervision order. Further, if the society wishes to require that the children be seen for a complete physical examination by someone other than Dr. Rammo then it shall have the authority to make such arrangements as I have concerns that Dr. Rammo did not report any protection concerns regarding L.O. to the society

[119] With respect to L.O., the mother accepts no responsibility for her lack of growth and development. The mother blames the doctors for not earlier alerting her to their concerns about L.O.'s growth. The mother's evidence that she followed up with Dr. Rammo and Dr. Greenwald's concerns about L.O. is contradicted by their medical notes. The mother did not follow up with appointments to see Dr. Greenwald.

[120] The mother implies that she did not know that the doctors were concerned about L.O.'s lack of growth and development. However, this is again contradicted by their notes.

[121] Although Dr. Cory was clear in her evidence that both doctors should have initiated an investigation or referred L.O. to the hospital due to her failure to thrive much earlier, it is not for this court to determine their professional responsibility in caring for L.O. or their legal duty to report their concerns to the society.

[122] However, it is the responsibility of this court, to ensure that this child is no longer at risk of harm. Counsel for the mother and the mother herself attempted to provide various possible explanations as to a possible cause for the child's failure to thrive such as excessive calcium, constipation or some genetic syndrome.

[123] Dr. Cory's evidence was clear and unwavering, that based on the medical information and investigation to date, it was her opinion that this child has failed to grow and develop because she was malnourished.

[124] Any person observing this child should have recognized that she was severely underweight and was not meeting her developmental milestones.

[125] Since being admitted to the hospital L.O. has gained weight and has grown in height and head circumference. At this stage the medical evidence is overwhelming that there is no underlying medical cause for her lack of growth. If there was a medical explanation then L.O. would not have gained weight. Unfortunately, due to her severe deprivation, the prognosis is very guarded.

[126] There is evidence that while in the hospital, the mother fed L.O. appropriately. But there is no credible explanation from the mother why she did not proactively seek out more medical care for her child. The mother cannot simply blame the doctors when it is clear that she did not follow up on their advice. Further, in simply observing this child she should have been aware that L.O. was not growing or developing properly and taken her to another doctor or to the hospital.

[127] The mother has a history of neglecting the needs of her other children, to place this child back into her care is to risk that L.O.'s needs will not be properly attended to.

[128] The mother also has a history of a lack of openness and co-operation with the society. There is no assurance that if this very vulnerable child was placed in her care that she would be open to advising the society of any concern or problems she might have with feeding or caring for the child.

[129] The mother has a history of not following up with services or medical recommendation that have been made. L.O. has significant needs that will require careful monitoring. L.O. will require a parent to follow-up with medical appointments, occupational therapy and other appointments. The mother is not a parent that can be entrusted to meet her many needs.

[130] The father B.M. also took no steps to ensure that L.O.'s needs were being met. While she was in the care of both of her parents neither one took adequate steps to ensure her needs were met. The father also must have seen how underweight and tiny she was and how she was not developing appropriately.

[131] At this stage it is not clear in the evidence whether or not he attended medical appointments with the mother or his caregiving role as he did not file an affidavit on this motion. The fact that he supports the mother being this child's caregiver after reading the affidavits filed on this motion and despite hearing the evidence of Dr. Cory, raises questions about his understanding of the severe neglect suffered by L.O. and his ability to protect this child.

[132] The mother's brother has been in the home for several years and was seen by the society as a protective factor in the mother's ability to meet the needs of all of the children. He never contacted the society regarding concerns about L.O.'s growth.

[133] Accordingly, these three adults were either unaware of or unconcerned about L.O.'s serious lack of growth and developmental delay. There is a serious risk that any of them would be willing or able to meet her needs.

[134] I find that there is overwhelming evidence that L.O. cannot be protected by any order of supervision and she should remain in the temporary care of the society.

## 8. Order

[135] There will be an order as follows:

1. The child L. M.M.O. born [...], 2018 shall be placed in the temporary care and custody of the Catholic Children's Aid Society.
2. The children N.R.O. born [...], 2001, S.F.B.O. born [...], 2002, C.L.B.O. born [...], 2004 and D.L.B.O. born [...], 2006 shall be placed in the temporary care and custody of their mother V.O. subject to terms and conditions set out in paragraph 2 of the Notice of Motion (a) to (j).
3. In addition, the society may require that the children have a complete physical examination by a doctor chosen by the society. The mother shall fully co-operate to make the children available for such an examination.
4. If the society determines in consultation with the school authorities that the children should attend for summer school the mother shall ensure that the children attend.
5. Any breach of this order is to be brought to my immediate attention and may result in some or all of the children being removed from the care of the mother.
6. Access by the mother and B.M. to the child L.M.M.O. shall be at the discretion of the society at a minimum of once a week and shall remain supervised by the society until further court order.
7. The society shall prepare this Order.

[136] The proceeding is adjourned for a case conference on July 25, 2019. The society shall file either an updating affidavit or a case conference brief.

**Released: June 3, 2019.**

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Signed: Justice Roselyn Zisman