WARNING

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

This is a case under Part III of the *Child and Family Services Act* and is subject to subsections 48(7), 45(8) and 45(9) of the Act. These subsections and subsection 85(3) of the *Child and Family Services Act*, which deals with the consequences of failure to comply, read as follows:

> **45.**—(7) *Order excluding media representatives or prohibiting publication.*— The court may make an order,
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> . . .
>
> (*c*) prohibiting the publication of a report of the hearing or a specified part of the hearing,
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> where the court is of the opinion that . . . the publication of the report, . . ., 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.
>
> (8) *Prohibition: 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) *Idem: order re adult.*— 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.
>
> . . .
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> **85.**—(3) *Idem.*— A person who contravenes subsection 45(8) (publication of identifying information) or an order prohibiting publication made under clause 45(7)(*c*) or subsection 45(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.

Toronto Registry No. C2218/01
DATE: 2002·VI·05
CITATION: *Children's Aid Society of Toronto v. M.(P.)*

ONTARIO COURT OF JUSTICE

IN THE MATTER OF a motion under rule 16 of the *Family Law Rules*, O. Reg. 114/99, for summary judgment of supervision under Part III of the *Child and Family Services Act*, R.S.O. 1990, c. C-11, respecting A.A. (born on 19 July 1993), a child apparently in need of protection;

B E T W E E N :

CHILDREN'S AID SOCIETY OF TORONTO,
Applicant,

— AND —

P.M., W.M. and M.A.,
Respondents.

Before Justice Robert J. Spence
Heard on 31 May 2002
Reasons for Judgment released on 5 June 2002

CHILD PROTECTION — Evidence — Plan of care — Formalities — Unrepresented father had not filed formal plan of care but, because of serious nature of motion for summary judgment made by children's aid society, motions judge examined totality of father's evidence to create "constructive" plan of care for his benefit.

CIVIL PROCEDURE — Representation — Party without lawyer — Duty of court — Assistance to self-represented party — Court should ensure that unrepresented party has every chance to advance his case — At motion for summary judgment made by children's aid society, court should consider all aspects of unrepresented father's material filed in court record, even though he may not have referred to some of it in his submissions — Where father had not filed plan of care in child protection case, court was prepared, after reviewing his evidence, to regard that evidence as "constructive" plan of care.

CIVIL PROCEDURE — Summary judgment — Defence — Allegations or denials — Bald allegation unsupported by evidence — Father opposed motion by children's aid society for summary judgment by denying inappropriate behaviour with child —

Father also accused (without any factual basis) maternal grandparents of trying to poison child's mind against him; society's worker of being biased against him; and both grandparents and worker of orchestrating "scam" to alienate child from father — Party opposing *prima facie* case for summary judgment must set out specific facts showing genuine issue for trial and cannot rely upon mere allegations or denials.

A boy (now almost 9 years old) had been in the care of his maternal grandparents almost from birth. About 2½ years ago, the court gave the grandparents and the natural father joint custody, with the grandparents' home as the child's primary residence. Because of the resulting behavioural and other difficulties with the boy, the father and the grandparents voluntarily entered into a "temporary care agreement" with a local children's aid society. When child made disclosures to the society that his father had beat him for no reason and that he had sexually touched him, the society launched a child protection application seeking a six-month wardship order. It obtained an interim order of care and custody followed shortly by an order suspending the father's access. A few months later, the interim order was amended, returning the child to the grandparents under society supervision.

The society had now amended its application to seek a 12-month order that would place the child with the grandparents under society supervision, during which time the grandparents would seek an order for the sole custody of the child. The society also made a motion for summary judgment in this case. In support of that motion, the society filed affidavit evidence that the boy was afraid of and did not want to see his father. It included statements that the boy made to his grandparents, the society worker and assessing psychologists that his father had sexually touched him and beaten him. The psychological assessment showed that the boy felt safe and comfortable with his grandparents, was fearful of contact with his father and was at risk of psychological harm if he were forced to have further contact with his father.

For his part, the self-represented father responded to the motion with total denials of any inappropriate behaviour with his son and with harsh accusations that the grandparents were trying to poison the child's mind against him, that the society worker "was biased against me" and both the grandparents and the worker were involved in a "scam" to alienate the child from the father.

Held:— Motion granted. The court found the boy to be a child in need of protection on grounds of having child suffered emotional harm. The court made a 12-month order placing the boy with his grandparents subject to society supervision and with all access by the father suspended.

Because the father was unrepresented on such an important motion, the court owed a duty to him to ensure that he had every chance to advance his case and to consider all aspects of his material filed in the court record, even though he may not have referred to some of it in his submissions. In this case, the father had not filed a plan of care, but the court was prepared, after a review of his evidence, to regard that evidence as a "constructive" plan of care.

At a motion of summary judgment, the guiding criterion is whether a genuine issue for trial exists. In its material, the society had made out a *prima facie* case for summary judgment. In response, the father had presented nothing more than blanket denials and

allegations — material unbacked by concrete facts that, by itself, could not rebut the society's *prima facie* case. Regardless of the causes of the child's feelings and despite the father's protests of love for his son, the uncontradicted evidence led to the inescapable conclusion that ongoing contact between the boy and his father would be damaging to the child, that access by the father would destabilize the child psychologically and that the father would very likely exploit such access to pull the child over to his side in his conflict with the grandparents.

STATUTES AND REGULATIONS CITED

Child and Family Services Act, R.S.O. 1990, c. C-11 [as amended], clauses 37(2)(*f*) and 37(2)(*i*).

Children's Law Reform Act, R.S.O., c. C-12 [as amended].

Family Law Rules, O. Reg. 114/99 [as amended], subrule 1(7), rule 16.

Rules of Civil Procedure, R.R.O. 1990, Reg. 194 [as amended], subrule 20.04(1).

CASES CITED

Catholic Children's Aid Society of Toronto v. B.(F.) and G.(S.) (2001), 199 D.L.R. (4th) 554, 16 R.F.L. (5th) 237, [2001] O.J. No. 1586, [2001] O.T.C. 293, 2001 CarswellOnt 1413 (Ont. S.C.).

Catholic Children's Aid Society of Metropolitan Toronto v. O. (Lisa Marie) and P. (Michael), 1996 CanLII 7271, 139 D.L.R. (4th) 534, [1996] O.J. No. 3018, 12 O.T.C. 161, 1996 CarswellOnt 3160 (Ont. Gen. Div.); affirming *Catholic Children's Aid Society of Metropolitan Toronto v. O. (Lisa Marie) and P. (Michael)*, 1995 CanLII 6216, 59 A.C.W.S. (3d) 916, 7 W.D.C.P. (2d) 49, [1996] W.D.F.L. 650, 9 O.F.L.R. 165, [1995] O.J. No. 3971, 1995 CarswellOnt 4393 (Ont. Prov. Div.).

Children's Aid Society of Toronto v. T. (Kathleen) and W. (Charles), 2000 CanLII 20578, 101 A.C.W.S. (3d) 944, [2000] O.J. No. 4736, 2000 CarswellOnt 4827 (Ont. C.J.**).**

Jewish Family and Child Services of Toronto v. A.(R.) and G.(J.) (2001), 102 A.C.W.S. (3d) 554, 20 L.W.C.D. 251, [2001] O.J. No. 47, 2001 CarswellOnt 73 (Ont. S.C.); affirming *Jewish Family and Child Service of Toronto v. A.(R.) and G.(J.)*, 2000 CanLII 22546, [2000] O.J. No. 6045, 2000 CarswellOnt 5169 (Ont. C.J.).

Mira Pilch ..... counsel for the applicant society
Respondent father, M.A. ..... on his own behalf
Douglas J. Millstone ..... for the respondent maternal grandparents P.M. and W.M.
Alawi K. Mohideen counsel for the Office of the Children's Lawyer, legal representative for the child

JUSTICE R.J. SPENCE:—

1: NATURE OF PROCEEDING

[1] The Children's Aid Society of Toronto (the "society") has brought a motion for summary judgment pursuant to rule 16 of the *Family Law Rules*, O. Reg. 114/99, as amended (the "rules"). The society seeks a finding that the child is in need of protection pursuant to clause 37(2)(*f*) or 37(2)(*i*) or both of the *Child and Family Services Act*, R.S.O. 1990, c. C-

11, as amended (the "Act"). The society asks the court to order the child be placed in the care and custody of his maternal grandparents (the "grandparents"), subject to society supervision, for a period of twelve months. The society further seeks an order that the biological father have no access to the child.

2: CONTEXT

[2] At the hearing of this motion the grandparents were represented by counsel. The child was also represented by counsel. The biological father, who had previously been represented by counsel, appeared on his own behalf. The grandparents and the child joined with the society in supporting its motion, both with respect to the finding as well as the disposition that the society was seeking.

3: THE AVAILABILITY OF SUMMARY JUDGMENT IN CHILD PROTECTION PROCEEDINGS

[3] Prior to the promulgation of the present *Family Law Rules*, there was no specific legislative authority permitting the Provincial Court to resort to summary judgment. Notwithstanding this lack of specific authority, it had been held that "in the clearest of cases" summary judgment could be granted by the Provincial Court in family law matters. In the case of *Catholic Children's Aid Society of Metropolitan Toronto v. Lisa Marie O. and Michael P.*, 1996 CanLII 7271, 139 D.L.R. (4th) 534, [1996] O.J. No. 3018, 12 O.T.C. 161, 1996 CarswellOnt 3160 (Ont. Gen. Div.); affirming *Catholic Children's Aid Society of Metropolitan Toronto v. Lisa Marie O. and Michael P.*, 1995 CanLII 6216, 59 A.C.W.S. (3d) 916, 7 W.D.C.P. (2d) 49, [1996] W.D.F.L. 650, 9 O.F.L.R. 165, [1995] O.J. No. 3971, 1995 CarswellOnt 4393 (Ont. Prov. Div.), Justice Sandra Chapnik stated at page 558 [D.L.R.] [my emphasis added]:

> **[79]** In my view, then, the wording of these sections [of the *Child and Family Services Act* not expressly prohibiting a summary judgment motion], in combination with the court's ability to control its own process and the overriding stipulation that the best interests of the children must remain paramount, provides sufficient authority for a judge of the Provincial Court to grant summary judgment in an appropriate case. At the same time, this is not a jurisdiction to be exercised other than in the ***clearest of cases*** and with extreme caution. . . .
>
> **[80]** **. . .** A child protection application, like a custody dispute, involves a consideration of the best interests of the child and a determination of where the responsibility for the care and guidance of the child is best placed. Such a proceeding may well be more stressful for the child than a custody dispute. Accordingly, then, in those instances where it is abundantly clear that the matter need not proceed to trial for resolution, the interests of the child are best served by the determination of the issues on a motion for summary judgment.

[4] In September 1999, the present *Family Law Rules* came into effect. The relevant rule for the purpose of this motion is rule 16 which provides, in part, as follows [my emphasis added]:

> **16. When available.—**(1) After the respondent has served an answer or after

> the time for serving an answer has expired a party may make a motion for summary judgment for a final order without a trial on all or part of any claim made or any defence presented in the case.
>
> (2) *Available in any case except divorce.*— A motion for summary judgment under subrule (1) may be made in any case (including a child protection case) that does not include a divorce claim.
>
> . . .
>
> (6) *No issue for trial.*— If there is no genuine issue requiring a trial of a claim or defence, the court ***shall make a final order accordingly***.

[5] With the promulgation of the rules, and specifically rule 16, the Ontario Court of Justice is now expressly mandated to make a final order where there is no genuine issue requiring a trial. Furthermore, rule 16 expressly provides for the making of such orders in child protection cases.

4: THE TEST FOR GRANTING SUMMARY JUDGMENT

[6] As noted by Justice Chapnik above, the threshold test prior to the promulgation of the rules was the requirement that the matter before the court be the "clearest of cases". It has been suggested that the enactment of the rules no longer makes it necessary that every case where summary judgment is being sought be the "clearest of cases". See for example the decision of Justice George Lane in *Jewish Family and Child Services of Toronto v. R.A. and J.G.* (2001), 102 A.C.W.S. (3d) 554, 20 L.W.C.D. 251, [2001] O.J. No. 47, 2001 CarswellOnt 73 (Ont. S.C.), at paragraph [20], affirming *Jewish Family and Child Service of Toronto v. R.A. and J.G.*, 2000 CanLII 22546, [2000] O.J. No. 6045, 2000 CarswellOnt 5169 (Ont. C.J.).

[7] It is unnecessary for this court enter into that debate at the present time. Rather, it should be sufficient to point out that, with the promulgation of the rules, the availability of summary judgment in child protection proceedings can no longer be considered an extraordinary remedy. However, as with any summary judgment proceeding a court must proceed cautiously, bearing in mind the need to ensure absolute fairness to the parties and the requirement that a party not be deprived of a full trial on the merits except where there is "no genuine issue requiring a trial".

[8] Furthermore, the demands of justice require the court to exercise an extra degree of caution in cases, such as the present one, where the party resisting the motion for summary judgment is unrepresented. The court owes a duty to a self-represented litigant to ensure that party has every opportunity to advance his case and to consider all aspects of his material that is contained in the record before the court.

[9] Rule 16 does not assist in determining what is meant by the words "no genuine issue for trial". However, subrule 1(7) permits the court to decide a matter by analogy and, where appropriate, by reference to the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended. Subrule 20.04(1) of the *Rules of Civil Procedure* provides as follows:

> **20.04 General.**—(1) In response to affidavit material or other evidence

> supporting a motion for summary judgment, a responding party must not rest on the mere allegations or denials of the party's pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue for trial.

The following two cases assist in understanding what is meant by the words "genuine issue for trial" and the court's role on a motion for summary judgment.

[10] In *Children's Aid Society of Toronto v. Kathleen T. and Charles W.*, 2000 CanLII 20578, 101 A.C.W.S. (3d) 944, [2000] O.J. No. 4736, 2000 CarswellOnt 4827 (Ont. C.J.), Justice Penny J. Jones had the following to say, at paragraph [10]:

> **[10]** Subrule 1(7) of the *Family Law Rules* deals with the situation in which a matter is not adequately covered by the rules and it permits the court to decide a matter by analogy to these rules, by reference to the *Courts of Justice Act* and the Act governing the case, and, if the court considers it appropriate, by reference to the *Rules of Civil Procedure*. I have considered it appropriate to read subrule 20.04(1) into rule 16 and to apply the applicable case law decided thereunder. To do otherwise would, in my opinion, defeat the effectiveness of rule 16. In order successfully to winnow out cases that do not require a trial, a court must have before it a full evidentiary record. If the moving party were to present a *prima facie* case for summary judgment to the court, only to be defeated by a mere allegations or denials by a responding party, the rule would have no teeth. In order to have a useful and effective summary judgment rule, the responding party, faced with a *prima facie* case for summary judgment, must provide evidence of specific fact showing that there is a genuine issue for trial or risk losing. Mere allegations or blanket denials, or self-serving affidavits not supported by specific facts showing that there is a genuine issue for trial must be insufficient to defeat a claim for summary judgment in such cases.

[11] In *Catholic Children's Aid Society of Toronto v. F.B. and S.G.* (2001), 199 D.L.R. (4th) 554, 16 R.F.L. (5th) 237, [2001] O.J. No. 1586, [2001] O.T.C. 293, 2001 CarswellOnt 1413 (Ont. S.C.)., Justice Susan G. Himel stated at paragraph [27]:

> **[27]** In ruling on a motion for summary judgment, the court is not to assess credibility, weigh evidence, or find the facts. The court's role on such a motion is narrowly limited to assessing the threshold issue of whether a genuine issue exists requiring a trial. The court, however, has the duty to take a hard look at the merits of an action at this preliminary stage.

5: BACKGROUND AND HISTORY

[12] The child was born on 19 July 1993. From the time of his infancy, the child lived with his maternal grandparents, the M. family. By order of the Ontario Court of Justice dated 1 November 1999, the grandparents and the father were given joint custody of the child, with the child's primary residence to be with the grandparents and his secondary residence to be with the father. The child was to be under the care and control of the father each weekend from Friday evening until Sunday evening, as well as on other occasions that were set out in that court order. The child's biological mother has had no involvement with the child for a long period of time.

[13] As a result of behavioural and other difficulties with the child, the father and the grandparents entered into a voluntary "temporary care agreement" with the society on 5 July 2001. Briefly, some of the events leading up to that agreement were as follows:

1. The child had been suspended from school twice as a result of acting out in a physically aggressive manner.
2. The grandmother had to restrain the child physically on one occasion when the father did not show up for a scheduled visit.
3. The child issued threats from time to time.
4. On one occasion, the child hit the grandmother with a pole.
5. The grandmother described an incident in which the child bit his father and left marks on him.
6. In June 2001 while the child and his father were at Centre Island, the child lost control of himself and the police were called as a result of a report that the child went after his father with a stick from a tree. During the same incident, the child reported that the father slapped him across the face. While this was denied by the father, the police reported they observed three bruises on the child's skin.

[14] The temporary care agreement was to have lasted until 5 November 2001. However, as a result of incidents that occurred subsequent to the signing of the agreement, the society brought a protection application on 8 August 2001. On that date, Justice Heather Katarynych made an order placing the child in the temporary care and custody of the society, with supervised access to the father and access to the grandparents, as arranged by the grandparents and the society.

[15] The order of Justice Katarynych arose from certain incidents that had occurred in the weeks following the making of the temporary care agreement. Perhaps the most serious of those incidents was disclosure by the child, on or around 31 July 2001, that the father had been sexually touching him while the two of them were in the shower together. During a police interview, the child disclosed a number of things, including the following:

1. His father would beat him up for no reason.
2. His father would touch his private parts while in the shower.
3. His father would become upset when he did not shower.
4. He felt angry when his father would touch his private parts.
5. His father would rub both his penis and bottom until he got out of the shower.

[16] During a subsequent police interview, the father acknowledged washing his son's private parts in the shower but explained that he had to do this because the child did not like to use the shower and clean himself when he became dirty. He denied any inappropriate behaviour toward the child.

[17] During a society interview with the grandmother, she stated that the child had told her that his father hits him with a stick and that father would touch him in the shower (pointing to his penis).

[18] The father telephoned the society on 3 August 2001 stating that he did not want the society worker to speak with the child; he did not want the grandmother to speak with the child; the grandmother made up the story about the father's alleged behaviour; and the grandmother is very evil.

[19] As a result of the foregoing series of events, the society felt that the temporary care agreement was no longer appropriate to protect the child's interests. The protection application sought an order that the child be brought into society care for a period of six months. Against that backdrop of events, Justice Katarynych made her order on 8 August 2001, referred to above.

6: SOCIETY'S EVIDENCE AND EVENTS SUBSEQUENT TO ORDER OF 8 AUGUST 2001

[20] The order of 8 August 2001 made it clear that the father was not to call the group home and that he was to work co-operatively with the society.

[21] On the following day, a worker from Ambleside Residence telephoned the society worker to advise that the father had called that day and conveyed his position that grandmother should not have any access to the child. The Ambleside worker also advised that the father indicated something about the child's having a lover at the group home and something about the child's "sucking dick".

[22] On 10 August 2001, the child attended for a psychological assessment with Dr. Daniel Fitzgerald. Dr. Fitzgerald reported that the child had strong cognitive skills and overall functioning in the high average range. He stated the child made it clear that he enjoyed living with his grandparents to whom he referred as his mother and father. The child also reported insight into understanding why he had come to live at a group home. For reasons that are essential to this judgment, I will cite *verbatim* certain portions from Dr. Fitzgerald's report:

> He stated he did not and in fact did not want to include either his biological mother or father in his description of his family. He talked about his father in angry terms and stated that he used to go to his house but that he did not like to do that because "I don't like him, he is not a nice person". [The child] went on to say that his father frightens him a great deal because he fights with him and says things that make him fearful. [The child] described having been punched, hit, kicked and beaten with a stick by his father. He also stated that his father touched his genitals when he was in the shower on one occasion. He stated that this type of touching had never happened to him before by anyone else. He described his father as a very angry person who will yell and swear. [The child] stated that he is very fearful of his father and does not want to have any contact with him either now or in the future. He described himself as being frightened when he sees his father and wants to turn around and leave.
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> . . . [The child] has been able to develop feelings of closeness and security with his grandparents. He feels comfortable within the context of this family. However, test results also point to a considerable amount [*sic*] anxiety being experienced by this boy. . . . There are no indications from the projective tests of

> any strong feelings of closeness or affection for his biological father. In fact, the relationship with his father appears to have a disorganizing and disturbing impact on the child. The relationship appears to be traumatizing for [the child] . . .

Dr. Fitzgerald went on to note the following in his recommendations:

> . . . his serious behavioural difficulties were related to the difficult circumstances in his personal life including being forced to have regular weekend access with a father who behaved in a very threatening, abusive and frightening manner. This experience had a very disorganizing influence on [the child] which interfered with his psychological functioning.
>
> . . . [The child] is quite emphatic in stating that he does not want to have any contact either now or in the future with his biological father. It is recommended therefore that contact between [the child] and his father be terminated until it can be more clearly understood how this contact has been affecting him. [The child] needs to feel safe, secure and protected and should not be traumatized by continued exposure to an individual who he views as being abusive and frightening to him. . . . Access should then be contingent upon clarification of these issues through evaluation of the father.

[23] On 22 August 2001, Justice Katarynych suspended the father's access to the child.

[24] In October 2001, Ambleside Residence, where the child had been placed on 5 July 2001 when the temporary care agreement was signed, issued a progress report. I briefly quote from that report as follows:

> [The child] reports he is unhappy about being here and feels he will be going home very shortly. [The child] has daily contact with his grandmother and this seems to be a very positive relationship. [The child] visits with his grandmother on weekends whenever possible. . . . [The child] would like to move back with his grandmother . . . and expresses this is happening soon.

[25] On 21 December 2001, Justice Katarynych made an order returning the child to the temporary care and custody of the grandparents. The judge stated that the child required a level of stability that was no longer available to him in his then current placement. The child needed to be in a placement where he would be comfortable and feel secure. And that placement, the judge stated, was with his grandparents who had raised him from infancy. The judge did not reinstate access to the father, stating: "The child is still in a position where he is saying, I do not want the contact. I am not forcing him into that contact because it will destabilize him even more."

[26] In or about March 2002, Dr. Fitzgerald issued an addendum to his report of 10 August 2001. In that addendum, he noted that he met in December 2001 with Dr. Briggs, a psychologist who was conducting an assessment on behalf of the father. Dr. Fitzgerald was acting as a facilitator for a meeting that was to take place between the child and Dr. Briggs. However, the child refused to leave the group home to attend the meeting.

[27] On 13 February 2002, Dr. Fitzgerald met with the father who, in turn, insisted that the child was to be present at the meeting so he could see him and "be reassured that he was not being mistreated while in CAST care." After being told by both Dr. Fitzgerald as well as

his lawyer that the child was not to be present at the meeting, the father insisted that the meeting with Dr. Fitzgerald be audiotaped. Dr. Fitzgerald consented. However, Dr. Fitzgerald reported that the father did not participate in a meaningful way during that meeting.

[28] On 20 February 2002, Dr. Fitzgerald attended at a meeting with the child, the society worker and Dr. Briggs. The purpose was to permit Dr. Briggs to interview the child. I quote the following from Dr. Fitzgerald's report regarding that meeting:

> I was asked to be present because [the child] was familiar with me and it was thought that my presence would allow him to feel more comfortable and understand the process of being interviewed by a psychologist as I had interviewed him on several occasions. The meeting lasted for a short period of time. [The worker] requested that Dr. Briggs not convey to [the child] his father's wishes or feelings for him and Dr. Briggs objected to what she felt were constraints upon her ability to interview [the child] and to having to do so in the presence of so many others. Dr. Briggs asked [the child] if he would like to see his father and [the child] replied "no". She then asked if he thought he would ever like to see his father and [the child] again replied "no".

[29] On 25 March 2002, the society brought an amended protection application seeking to have the child placed with his grandparents under society supervision for twelve months. In her follow-up affidavit sworn on 1 March 2002, the society worker noted the following since the child had been returned to the grandparents on 21 December 2001:

1. The grandparents had enrolled the child in a new school that met his academic and behavioural needs.
2. Although the child was still demonstrating "testing behaviour", the grandparents were working closely with the school and the society. The grandparents "are consistently teaching and encouraging [the child] to express his feelings in a manner that is constructive".
3. The grandmother had connected with Aisling Discoveries in order to follow through with recommendations made by Dr. Fitzgerald.

[30] The society referred as well to the history of the involvement of Dr. Briggs and the child's expressed desire to have no further contact with his father at any time in the future.

7: THE FATHER'S EVIDENCE

[31] Before referring to the father's evidence, I would point out some background leading to the hearing of this motion. Until 15 May 2002, the father had been represented by counsel. On 15 May 2002, I made an order removing the father's counsel as his solicitor on that solicitor's motion. On the same date, the parties agreed to 31 May 2002 as a date to argue the summary judgment motion. The father appeared on 15 May 2002 and acknowledged that he would be present on 31 May 2002, the date set for argument.

[32] On 31 May 2002, the father filed an answer and some typed supporting material (not in the form of a sworn affidavit). I allowed this material to be filed and to form part of

the record on this motion.

[33] On previous occasions, the father had filed affidavit evidence setting out his position and his responses to some of the society allegations.

[34] During the course of argument, the father referred to some of his written material that had been filed in these proceedings. However, he did not refer to all of his material. Notwithstanding this and particularly because the father was unrepresented during the motion, I have reviewed all of the father's material that forms part of the record. As I stated in the early part of these reasons, the court owes a duty to be extra diligent on behalf of unrepresented litigants.

[35] The evidence of the father consists in large part of allegations and accusations against the grandparents and, in particular, the grandmother. He accuses the society of being influenced early on in the case by allegations stemming from the grandmother. He states that the grandmother "was trying to poison my son's mind" and, for that reason, her evidence cannot be considered to be "neutral". The father's evidence contains repeated references to the grandmother's attempt, in essence, to brainwash the child against the father. At one point in his evidence, he states: "I could not stop myself from thinking of how [the grandmother] was poisoning [the child's] mind with sexual talk."

[36] The father also made it clear in his evidence that he felt the society worker "was biased against me".

[37] In response to the allegations of sexual touching of his son, the father states that, when he was interviewed by the police officer, the officer stated that what the child had said "sounded to him [the officer] like someone had put those words into [the child's] head".

[38] The father stated "I was shocked and afraid when [the sexual disclosure was made]. I knew that [the child] would never have said this if he was not influenced by someone as I have never touched my son in a sexual or improper way. . . . I suspected [the grandmother] had put these words into [the child's] head."

[39] The father, in his evidence, accused the society worker of "attempting to trick me" by signing the temporary care agreement describing the father as "unable" to handle the child but not using the word "unable" to describe the grandmother.

[40] The father makes it abundantly clear in his evidence that he never sexually touched his son and that he never hit his son in an inappropriate manner or abused him in any way.

[41] Part of the father's evidence consisted of an affidavit sworn in June 1998 by an individual in the prior custody proceedings between the father and the grandparents. That individual expresses the view that the grandmother's complaints about the father were motivated by a lack of understanding of the father's cultural and religious background. He states that, as a result, the grandmother "may be putting strange ideas in the child's mind".

[42] The father accuses the grandparents of being alcoholics. He states that the society

worker and the grandparents were involved in a "scam", in essence, to make the child hate the father.

[43] The father makes it clear that he wishes to have custody of his son, that he loves his son and his son's interests would be best served were he allowed to live with his father.

[44] I do not purport to set out in these reasons all of the father's evidence. I have attempted to highlight those portions that best describe his position. Although he did not clearly articulate the specific relief he was requesting at the motion, I have given him the benefit of the doubt by assuming he is opposed to the society's request for a protection finding as well as the disposition the society seeks. I have read all of the father's evidence with these assumptions in mind.

[45] The father has not filed a plan of care, as such. However, in reviewing his evidence I have considered it as though it were a plan of care and I have attempted to make every possible allowance for the fact that he was not represented by counsel in the presentation and argument of this proceeding.

8: ANALYSIS

[46] As I stated at the outset of these reasons, I am mandated to make a final order if I can find there is no genuine issue for trial. I cannot assess credibility, weigh evidence or make findings of facts. I am obligated, however, to take a close, hard look at what is before me and to determine on the basis of the uncontested facts whether a genuine issue for trial exists.

[47] The father has filed extensive material wherein he makes serious allegations against the society and against the grandparents. However, blanket allegations without concrete facts to support those allegations are nothing more than self-serving statements. Self-serving statements and mere allegations are not sufficient to rebut a *prima facie* case for summary judgment. (See *Children's Aid Society of Toronto v. Kathleen T. and Charles W.*, *supra*.)

[48] The essence of the society's case on this motion is as follows:

1. The child is afraid of and does not wish to see his father. He has expressed to others that his father has sexually touched him and has beaten him.
2. The child has made these views and fears known not only to his grandparents but also to third parties such as Dr. Fitzgerald, Dr. Briggs and the society worker.
3. Dr. Fitzgerald's assessment reveals a closeness between the child and the grandparents. It also paints a picture of a child who is fearful of contact with his father and who is at psychological risk in the event of further contact with the father.
4. The child feels comfortable and at home with his grandparents. He has made these views known to Dr. Fitzgerald, to the society worker and to the

Ambleside Residence.

5. In the view of the society worker, the grandparents have been assisting the child in a constructive manner since his reunification with the grandparents in December 2001.

[49] The uncontradicted evidence before me is that this child needs the stability that can be provided by his grandparents. He needs the comfort and familiar surroundings that his grandparents are able to give to him. The grandparents have the resources of the society to assist them with the child's needs and all the evidence suggests that the grandparents will avail themselves of those resources. They appear to have a very close bond with this child and they are motivated by that bond to work with the society in assisting the child with his needs.

[50] This child requires permanence and stability that only a cessation of the existing litigation can provide. He has been torn from place to place and from person to person and it is time for all of this to come to an end. He is a little boy who needs to feel secure, to feel happy and to feel wanted. He does not need to be prodded and poked by doctors and to be interviewed by third parties. What he requires is the opportunity to live a happy and healthy life, free from conflict, as much as possible.

[51] All of that is to say that it is somewhat beside the point whether there has been some "influence peddling" on the part of the grandparents, as alleged by the father. I am not permitted to make that finding of fact in this motion as there is conflicting evidence on this point. However, I need not concern myself with that issue as it does not bear on the reality of this child's life. The reality is what this child believes, what he loves and what he fears. We are long past the point where it is in any way constructive to dig to through the soil and roots and try to identify the seeds of these problems. We are long past having to point fingers at anyone. This is not about what the father wants; it is not about what the grandparents want; it is only about what will assist this little boy to regain the stability he sorely requires and deserves.

[52] What is clear and uncontradicted in the evidence before me is that this child needs to be with his grandparents.

[53] Despite the father's love and despite his sincere desire to have the child remain a part of his life, the uncontradicted evidence before me in this motion leads to the inescapable conclusion that ongoing contact between the child and the father would be damaging to the child. It is clear that access by the father would destabilize the child psychologically. It is also very likely that access would be used by the father as an opportunity to pull the child over to his side in this seemingly endless tug-of-war between the grandparents and the father.

[54] There is no question that the father truly loves his son. I have no doubt of that. Nor do I doubt the father's sincerity when he expresses his wish to have custody of his son. Furthermore, to cut off all access between the father and the son would no doubt be devastating for the father. In order to remove access between a child and a parent the circumstances will have to be very compelling. A child is entitled to grow up knowing his

parents. He is entitled to form a bond with his parents. In rare circumstances, however, that kind of contact works to the detriment of a child's best interests. It is the best interests of this child that I am required to ascertain. In this case, the evidence strongly leads to the conclusion that continued access between the child and the father ought to cease.

9: CONCLUSION

[55] For the foregoing reasons, I make the following order:

1. I find the child to be in need of protection pursuant to clause 37(2)(*f*) (having suffered emotional harm) of the Act.
2. The child will be placed in the care and custody of his grandparents subject to the supervision of the Children's Aid Society of Toronto for a period of twelve months during which period of time the grandparents shall co-operate in addressing the child's ongoing treatment and educational needs.
3. The father's access to the child shall be suspended for the duration of this supervision order.
4. It is to be hoped that the father and the child may one day be able to reconnect with one another. However, this cannot happen unless the child overcomes his fear of the father. The father, in turn, must realize that the needs of the child will have to take priority over his own needs. Should the grandparents and the society have reason to believe that some form of contact ought to be re-established during the currency of this supervision order, either may bring this matter back for me for a reconsideration of the no-access provision.

[56] The society filed a plan of care on 28 May 2002 in which it indicated that access between father and child ought not to be reinstated until the child's treatment providers recommend that such reinstatement would be in the best interests of the child. The society's position is that, in order to work towards this goal, the father ought to engage in a meaningful way in a psychological assessment to determine what issues he needs to address in order for him to be a positive and meaningful part of the child's life.

[57] As is apparent from my reasons, I would endorse this statement.

[58] I note as well the plan of care provides for the society to terminate its supervision of the grandparents in the event they obtain an order for the sole custody of the child under the *Children's Law Reform Act,* R.S.O., c. C-12, as amended, with an order for access between the child and the father that is appropriate given the circumstances at that time. I encourage the grandparents to move toward this goal as soon as possible so that this litigation can find its light at the end of what has been a very long tunnel.

[59] This is not a case for costs.