Citation: *A.N. (Re),* 2013 YKTC 44 Date:20130628
Docket: 10-T0093
Registry: Whitehorse

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

IN THE MATTER OF THE *CHILD AND FAMILY SERVICES ACT,*
R.S.Y. 2008, c. 1, and A.N.

Appearances:
Tracy-Anne McPhee — Counsel for the Director
Kim Hawkins — Counsel for the mother, K.N.
Lenore Morris — Child's Lawyer

REASONS FOR JUDGMENT

[1] My oral decision from the bench was delivered on June 7, 2013. I granted the Director's application for a continuing custody order. Following are the written reasons I undertook to deliver before the end of this month.

[2] A.N. was born 12 October, 2009. Her imprisoned father, R.B., attended some of the proceedings and stated his support of K.N., the mother, in having A.N. returned to her. R.B. is a member of the Vuntut Gwitchin First Nation. R.B. has had no relationship with K.N. for some time and seeks nothing for himself as the father in these proceedings. Certainly, the First Nation is very much concerned about A.N. A representative for Vuntut Gwitchin First Nation, Dorothy Frost, has been present

throughout. The *Child and Family Services Act,* S.Y. 2008 c. 1 consistently references the importance of First Nations for their children.

[3] A.N. was taken into the care of the Director of Family and Children Services on 20 January 2011 with a warrant under the *Act.* A.N. was initially placed temporarily with K.N.'s sister, D.C.

[4] K.N. consented to a temporary custody order for A.N. on 17 February 2011, 11 August 2011 and 23 February 2012. On 31 May 2012, the Director made application for an order that A.N. be placed in the continuing custody of the Director pursuant to s. 57 (3)(d) of the *Act.* On 25 July 2012, the Court ordered that the Director's application be adjourned and that A.N. shall remain in the care of the Director on an interim basis until further order of the Court pursuant to s. 79 (3)(b) of the *Act.* There were numerous appearances in court after the Director filed the application for a continuing custody order. Eventually the protective intervention hearing was set down for several days commencing on 28 January 2013.

Background of Mother, K.N.

[5] K.N. was born in 1973 in Fort St. John, B.C. Her grandmother was Métis. In some of the reports K.N. was described as Caucasian. Her racial background is not a factor in this case. K.N.'s childhood progressed reasonably well until age 11, although she sensed her mother felt that her sister, D.C., was better than she was and that she loved D.C. more.

[6] When K.N. was only 11 years old, she and D.C. were with a number of other young people in a parents' cabin. While left unattended, K.N. was sexually assaulted by

her 12-year-old “boyfriend”. Also at this time, she and that boy heard D.C. being sexually assaulted by an 18-year-old male. K.N. was prevented by the boy from helping her sister.

[7] The fear, isolation, guilt and shame stayed with K.N. for a long time. She felt so bad she couldn’t help her sister.

[8] K.N. was sexually active with her “boyfriend” from the age of 11. Many times this was against her will; other times she consented, insofar as an 11-year-old can consent.

[9] Another traumatic event occurred when K.N. was 15, when she was sexually assaulted by an uncle. He grabbed her breasts and touched her genitals. She was again afraid and humiliated. K.N. told her grandmother and parents, neither of whom did anything. She told a boyfriend who threatened to confront the uncle but this was called off. Her sister, upon learning of the sexual crime, was empathetic but unable to intervene.

[10] Dr. Allan D. G. Wade was called to give opinion evidence in this proceeding. He is an expert in several areas including interpersonal violence and response of victims. Later in this judgment I will be examining Dr. Wade’s report in more detail, but it is necessary to emphasize the significance of these devastating and horrendous events on K.N.’s life in this section of the judgment dealing with her background. In his comprehensive report filed on 19 February 2013, Dr. Wade stated:

> First, K.N. endured two profoundly traumatic experiences that were reflected in marked changes in her behaviour at ages 11 and 15. Because the violence was concealed, the changes in K.N.’s behaviour seemed inexplicable and were seen

> as evidence of her being a difficult or troubled child. She began to develop a reputation as bad or mad.
>
> Second, research shows that the quality of social responses to victims of violence is the single best predictor of the level of victim distress. K.N. received negative social responses when she disclosed the sexualized assault by her maternal uncle.
>
> …
>
> In the absence of supportive responses, K.N. began to blame and at times hate herself. This is common among victims of violence, especially those who receive negative social responses as children.
>
> At age 15, K.N. and her mother had several physical altercations. K.N.'s father told K.N. he would kill her if she again hit her mother. So the next time K.N.'s mother became aggressive, K.N. took a kitchen knife and huddled in the corner of the kitchen until FCS came and removed her.
>
> K.N. was taken to a Receiving Home in Prince George, where she stayed for about 10 days, before running away. She lived with friends for a period of time and did a good deal of "partying", that is, using drugs and alcohol. This is one of the first instances of K.N. using drugs and alcohol to manage the trauma arising from the violence and negative social responses.

[11] Ultimately, the mother/daughter relationship was patched up and K.N. returned to school successfully and worked part-time.

Male Relationships

[12] In 1995 K.N. married N.W. but by 1996 she was a single mom with two boys, T.W. and B.W. born in 1994 and 1995 respectively. The divorce was finalized in 1998. During her nine years or so as a single parent, she supported herself and the boys through various jobs, employment insurance, owning her own business and medical leave (suffering stress as a result of her father's death in the late 90's).

[13] A high school acquaintance, A.R., started dating K.N. in 2004. He seemed good to her and the boys at the outset and moved in with them. In November 2005, a daughter K.R. was born.

[14] This relationship was tumultuous, with K.N. describing in detail A.R.'s controlling behaviour and mental, emotional and physical abuse. A.R. moved out in January 2006. On top of all this, K.N. was suffering from post-partum depression and had received an unfavourable court order in relation to the custody of K.R.

[15] During this time her criminal activities and use of cocaine started. The most serious crimes of violence occurred on 26 August 2006 and 23 September 2006 when K.N. unlawfully entered the residence of A.R. and viciously attacked him with a knife.

[16] After being assessed by the Forensic Assessment Unit of the Whitby Ontario Mental Health Centre in October 2006, she was found fit to stand trial. K.N. also met the criteria for borderline personality disorder, polysubstance abuse and major depression. K.N. was ecstatic with the diagnosis, feeling it gave her a basis for her violence and an opportunity for a fresh start.

[17] K.N. was sentenced to a total period of imprisonment of two years less a day, less time served, in February 2007. Her two boys, T.W. and B.W. were already placed in a long-term arrangement with her sister, D.C. K.R. was to stay in British Columbia with her father, A.R.

[18] It was while she was in prison that K.N. met R.B., as they were in separate segregation units, side by side. R.B. was opportunistic and said all the right things. K.N.

was extremely vulnerable. Once back in the general population, the women told her that R.B. was to be avoided at all costs and they did their utmost to discourage her from pursuing a relationship with him. K.N. totally ignored the advice, fostered the relationship by telephone and in 2008 headed to Prince George, B.C. where R.B. was to be released from a federal penitentiary.

[19] In the meantime, K.N. had a most unsatisfactory living arrangement in Whitehorse in which she was sexually assaulted by her landlord. Her drinking increased substantially.

[20] R.B. had only been released a short while when K.N. became pregnant with A.N. in January 2009. He assaulted her before A.N. was born and afterwards. R.B. was not charged, as K.N. wanted him in her life.

[21] In April 2010, R.B. assaulted K.N. again by choking her. This time he was charged and convicted.

[22] Returning to Whitehorse in June 2010, K.N., within a short time, moved into Kaushee's Place, a women's shelter with a good reputation. Living an active and healthy lifestyle with no substance abuse, K.N. and A.N. were doing very well. Unfortunately, they had to leave the accommodation at the shelter due to a huge demand on the service.

[23] The following two temporary placements at local hotels presented major problems in that the police were called. A.N. was subjected to violent outbursts and unruly commotions on both occasions which were obviously very upsetting to her. The

common thread was R.B. On at least one occasion K.N. was consuming alcohol. Through a well-intentioned but impulsive story to a local newspaper, The Yukon News, K.N. carelessly disclosed her location at the Stratford Hotel, now public information upon which R.B. pounced. Fortunately, after these two incidents, R.B. wasn't much of a problem.

[24] On the subject of bad relationships, K.N.'s next one was with J.K., alias J.M. I shall refer to him as J.K. This also was a disaster. K.N. was subjected to much harsh physical abuse by him at her apartment and elsewhere starting only three months into the relationship. To her credit, K.N. had checked out his criminal past with the probation officer and with J.K. himself. There was no domestic abuse in his past. Others spoke well of J.K.; he even had the nickname "Friendly". Things turned ugly quickly.

[25] Also, during the summer of 2011, there was a bizarre incident in which K.N. ended up in the Yukon River and was apparently rescued by J.K. An argument ensued and K.N. smashed the window of his vehicle.

[26] Later in 2011, K.N. was evicted from her apartment as a result of a major physical assault on her by J.K. In desperation K.N. had pulled the fire alarm. It was J.K. who called 911. When police arrived K.N. was sitting in the corner with a small knife in her possession. K.N. was markedly under the influence of her medications for a cold, which she had taken to knock her out as she was not feeling well. K.N. was arrested but the charges were withdrawn five months later. This is but one further example of K.N. receiving a negative social response, this time from the RCMP.

[27] Interestingly enough, in May 2013 it was J.K. who was allegedly assaulted by K.N.

[28] K.N.'s fourth relationship was with J.C. starting in December 2012. This was short-lived as K.N. recognized warning signs early on. This was a really good step for her. In my view, there is little concern, now, that K.N. will become involved with another abusive male partner.

Substance Abuse

[29] Before discussing in detail the subject of substance abuse, I want to point out that there is no significant issue with prescription drug use except as it pertains to combining them with alcohol. There are several instances of that occurring on the record. But, as to the prescription drugs themselves, K.N. has taken positive steps to reduce the necessity of taking them. Overall K.N. is quite health conscious. While in the past, she had been prescribed and taken Prozac, Zoloft and Seroquel; K.N. is now down to two medications, Clonazepam, (1 mg two times per day) and Topamax (125 mg once per day).

[30] K.N. started consuming excessive alcohol in her teenage years. She was regularly using cocaine throughout her time with A.R. and thereafter. K.N. stole from her employer to support the habit. Furthermore, she was using cocaine when pregnant with A.N. Her text messages to a well-known drug dealer M.H. in 2011 suggest that her use of cocaine continued after A.N. went into care.

[31] In June 2011, after assaulting an off-duty Whitehorse Correctional Centre guard, K.N. consumed alcohol to such a degree that she had 210 milligrams of alcohol per 100 millilitres of blood when arrested.

[32] In August 2011, K.N. was drunk and found in the fetal position lying on a road.

[33] Another time she met up with a male acquaintance, F., who took her to J.K.'s hotel room, after F. and K.N. drank a number of alcoholic ciders. J.K. was angry and K.N. left with F. Later she "hit the ground and blacked out" which led her to being taken to the hospital where she doesn't even remember stabbing a doctor with a pen.

[34] This is a snapshot of numerous instances of alcohol abuse sometimes combined with her prescription or illegal drug use.

[35] K.N.'s explanation that when she drank she got caught is clearly minimizing the extent of her addiction. Even though K.N. has acknowledged alcohol abuse as a problem and that she needs to work on her issue of substance abuse, it is obvious that her efforts have not succeeded for significant periods of time.

[36] It seems to me that K.N. was not as forthcoming as she should have been in advising Kate Hart, a counsellor at Offender Services, that she had been sober from May 2011 to March 2012. Her rationalization that the probation officer and the counsellor should have known of instances of drinking, of which she had apparently told them does not justify telling the counsellor that she had been sober for ten months. At best it suggests to me that she was drinking less than usual for her.

[37] It would appear that K.N. maintained sobriety from her last significant incarceration starting in September 2012 until her release in December 2012 through to the court proceedings from 28 January 2013 to 14 March 2013. Disappointingly, K.N. consumed alcohol on 1 April 2013 and was charged with several offences.

[38] Having not been accepted into an earlier program, K.N. was finally enrolled in an Alcohol and Drug Services ("ADS") women's 28 day residential program on 10 February 2013. Although she successfully completed 20 days, K.N. left the program over a disagreement with the way she was treated in relation to two other participants, who were allowed to stay on methadone and synthetic heroin, while she had to give up her prescription drug, clonazepam.

[39] Furthermore, she was concerned with the attitude of certain staff and how they approached the group. Her rationale for leaving was that she was protecting herself and the group by insisting ADS follow its own policies.

[40] It is my view that K.N. was unwilling to see the big picture here. Surely it was in her interest to downplay those issues, participate at least in a somewhat co-operative fashion, and complete this program, especially given the crucial timeframe of the court hearing.

[41] Regrettably, K.N.'s period of sobriety while out of custody and her peaceable crime-free living only lasted less than four months, despite all the established, viable supports that were in place for her. Even the prospects of a favourable court ruling in this case following a potentially persuasive report from psychologist, Bill Stewart, under

s. 59(1) of the *Act* were not enough incentive for K.N. to establish that she could offer A.N. a safe and nurturing environment.

Criminal History

[42] K.N. has a substantial criminal record consisting of 23 convictions and numerous admissions to jail, including arrests, remands or actually serving sentences. The history is relatively recent and includes seven convictions in 2007-2008, fourteen in 2012, and two in 2013.

[43] Her crimes started with a significant theft to support a cocaine habit, and to a lesser degree, to obtain items for her children. They escalated to major crimes of violence, including aggravated assault and assault causing bodily harm before settling into a pattern of breaches of court orders and less serious property and violent offences. Her longest period of imprisonment was two years less a day, less time served. She is presently awaiting trial on an assault charge.

[44] K.N.'s two most recent convictions dated 12 April 2013 were from offences occurring on 1 April 2013 involving an assault on a police officer engaged in the execution of his duty and a breach of probation by failing to abstain absolutely from the possession or consumption of alcohol. For the latter, her sentence was 18 days, time served and for the former, a 60 day conditional sentence order ("C.S.O.").

[45] On 9 May 2013, K.N. allegedly assaulted J.K. This is the case awaiting trial. For the breach of her conditional sentence order, K.N. served a brief period in custody and was released to serve the remaining time on the C.S.O. with an amended house arrest condition.

[46] One might be forgiven for contemplating whether K.N., for reasons perhaps not fully known or understood, is bent on self-sabotage.

[47] Indeed when K.N. was describing the considerable help she received from Dr. Wade, she talked about her positive approach and the improvement in her self-esteem knowing that “she was worth it”. Furthermore, she said that she could not have gone through this case back in mid-2012 and that she would have then sabotaged it by committing further offences. Could self-sabotage explain the events of 1 April 2013 and 9 May, 2013?

[48] K.N.’s explanation for drinking on 1 April 2013 related to the grief associated with her father’s passing at that time of year. We know that she was on stress leave back then because of how hard she took her father’s death in 1998. I do not want to be seen as minimizing her loss. Nonetheless, the importance of following through with stability with a view to getting A.N. back should have determined her course of behaviour.

Background of the child, A.N.

[49] A.N. was born on 12 October 2009 in British Columbia. She is now three years, eight and a half months old.

[50] K.N. was brought to the attention of the B.C. Ministry of Children and Families for use of drugs while pregnant. Just 25 days before A.N.’s birth a drug test came back positive for benzodiazepines and cocaine.

[51] By working with B.C. social workers, K.N. avoided having A.N. apprehended at birth. It appears that A.N. did fine with K.N. in B.C., other than witnessing violence by her father, R.B.

[52] On returning to Whitehorse in June 2010, A.N. enjoyed a relatively good life with her mother. The bonds were close. K.N. was very attentive to her and living a healthy lifestyle, especially while staying at Kaushee's Place. They had a safe place to stay and K.N. was not abusing substances. This is confirmed by the staff there.

[53] In contrast, A.N. was subjected to stress, upheaval and violence while staying briefly at the Stratford Hotel in August, 2010 and at the Family Hotel in October, 2010. It was unfortunate that K.N. and A.N. had to move out of Kaushee's Place, but I do not feel that K.N. did all she could have done to protect A.N. from these serious disturbances. When her mother was arrested, A.N. stayed with her aunt, D.C. for a brief period.

[54] In January 2011 things went terribly wrong. On the 17th, D.C. expressed serious concerns about K.N. being very angry and "out of it". Upon arrival of the social workers, Anne Mothersill and Jacqueline Clune, the residence was in total disarray and A.N. was crying and very upset. K.N. was in handcuffs, yelling and swearing at the RCMP. A.N. was taken from the turmoil and placed with D.C. again for a 72 hour placement.

[55] Earlier, there had been a family social event. K.N. admitted using prescription drugs that morning.

[56] What is most troublesome about 17 January 2011 was K.N. earlier stumbling down the last few stairs that evening with A.N. in the stroller. K.N. was having a cigarette outside with a neighbour. It was minus 25 degrees Celsius and A.N. was clad only in her pyjamas. K.N. was strongly under the influence of prescription drugs and alcohol.

[57] The neighbour who had called the RCMP had heard a loud noise and A.N. screaming in the hallway.

[58] With some assistance, A.N. and K.N. were helped back upstairs. K.N. admitted the purpose of attempting to leave was because she knew that D.C. had called Child and Family Services ("CFS").

[59] A.N. was apprehended with a warrant from D.C.'s residence on 20 January 2011 and placed with S.L.K. S.L.K. is a caring and devoted foster parent. She received A.N. into her care. The photo of A.N. taken at that time showed a confused, nervous and scared little girl who had been subjected to far too much turmoil in her 15 months of life. Her eyes were described as a "deer caught in a headlight". Subsequent photos of 26 August 2011 and 27 January 2013 showed a much more relaxed and settled little girl.

[60] A.N. displayed anger and fear initially. She screamed with a high pitch, was preoccupied with eating, drinking and the high-chair, could be explosive even to the point of foaming at the mouth and didn't like going to bed when alone in the dark. Most heart-wrenching was her emotionless look just staring at S.L.K. and others. A.N. enjoyed her visits with K.N. At the start she was more attached to her foster mother and did not want to go. Eventually that was resolved and things went well up until the point

that K.N. was arrested and in and out of jail. A.N.'s routine was disrupted. Visits were reduced and held in various locations, including the Whitehorse Correctional Centre ("WCC").

[61] The visits A.N. had with D.C. and other maternal family on Sundays were consistent and very beneficial to A.N. That these family visits continue is clearly good for A.N.

[62] Initially non-verbal, other than screaming, A.N. has progressed from two to three words to regular speech for a girl of her age by the summer of 2012. She is adjusting better to change.

[63] With the help of the Child Development Centre ("CDC") and Claire Levesque, their development therapist, A.N. has shown good improvement in her motor and language skills. The CDC helps children reach their highest potential. S.L.K. worked with Ms. Levesque in developing strategies.

[64] In her February 2012 report, Claire Levesque stated:

> A.N. is a lovely and sociable little girl who was very cooperative in trying all of the activities. She also showed a very nice attention span. She shows age appropriate skills in gross motor, fine motor, problem-solving and personal-social skills. She scored in the grey area in communication. K.N. is taking the Late Talking 2 Year Olds group at CDC and A.N. seems to be making progress.

[65] All children need to be in a safe, loving environment where they are nurtured. Dr. Wade told us that it is in the best interests of a child to be in safety with his/her primary caregiver. No one could argue with that. Regrettably, K.N. is unable to provide a safe

environment for her youngest daughter, A.N., as she approaches four years of age and needs to be placed appropriately so that she can continue to develop and mature into a young lady realizing all the potential she has.

Supportive Team for K.N.

[66] To say that K.N. availed herself of an extensive support network would be an understatement. Indeed, there have been some concerns that she has been too busy attending all these meetings and sessions. Certainly, K.N. has proven herself to be organized and for the most part, committed to her recovery.

[67] I am not going to list her entire support network but it has at times included, and to a lesser degree still includes (in alphabetical order):

1. Helen Allen, Child Care Worker, Kaushee's Place;
2. Renée-Claude Carrier, Assistant Director, Kaushee's Place;
3. Lianne Couch-Lacey, Probation Officer;
4. Barbara Curtis, Outreach Worker, Whole Child Program;
5. Heather Dickson, Addiction/Mental Health Counsellor;
6. Kate Hart, Program Facilitator, Offender Services;
7. Jennifer Henderson, Mental health Clinician;
8. Dr. Heredia, Psychiatrist;
9. Claire Levesque, Development and Therapist, C.D.C.;
10. Many Rivers Counselling and Support Services;
11. Bill Stewart, Psychologist;
12. Cheri Van Delst, Mental Health Clinician; and
13. Dr. Allan Wade, Clinical Counsellor and Consultant;

14. Yoga instructor.

[68] Many of these people have written insightfully and positively of K.N., for example:

Lianne Couch-Lacey

> The writer and collateral professionals have noticed a significant change in K.N.'s behaviour. She has become more mindful, skilled, planned and organized which in turn allows her to work through emotional reaction with mindfulness and alternative behaviours which in the beginning would have escalated to self harming and emotional driven criminal behaviour.

Cheri Van Delst

> Overall I would say K.N. has made significant strides toward change, and would suggest that there is still ongoing work for her to do. K.N. is clearly making better choices, however is aware that there are still choices that she makes more emotionally and impulsively that can cause problems in her life…

Heather Dickson

> …She works hard at understanding her own process and putting in safeguards against relapse. She is currently working on the concepts of personal responsibility and self sabotage.

[69] As expressed elsewhere, the "self-sabotage" continues to be of considerable concern to me.

[70] Renée-Claude Carrier was very helpful to K.N. and was very supportive of her in all their time together as well as her positive testimony. Ms. Carrier accurately and truthfully told us the following:

1. She never observed any inappropriate actions by K.N.;
2. She never saw K.N. under the influence of alcohol or drugs;
3. K.N. worked effectively with Dr. Heredia to get off certain medications;

4. K.N. became more grounded and less impulsive;

5. K.N. became more confident, assertive and able to deal with crises;

6. In the two years she knew K.N., she observed that K.N. had changed, especially since Dr. Wade got involved in July 2012.

[71] Despite all these good and positive improvements, there were the major problems caused by K.N. on 1 April 2013 and 9 May 2013. Were these moments of weakness by K.N.? Was there a build-up of pressure which she couldn't cope with? Were they acts of self-sabotage? Regardless, the result is the same instability which will emotionally harm A.N. It baffles me that these types of actions took place despite all the help she was receiving and knowing that a positive result for her in the protective intervention hearing might result. Regrettably, I must conclude that K.N. is not ready to take on the responsibility of raising A.N. even with the effective team of support she has. There is a high risk that the drinking and criminal activity will continue far too frequently with major disruptions caused to A.N.'s life.

[72] Regardless of the positive, reassuring support given by all these caring individuals K.N. still exhibits the characteristics of impulsivity and "self-sabotage".

Expert Psychological Opinions

[73] In *R.A. (Re),* 2002 YKTC 28, Chief Judge Stuart had this to say about expert opinions:

> [227] Expert testimony will be more influential if it derives from a balanced foundation. The problem is no so much how Ms. Oiffer was selected or used, but that given Ms. Oiffer was clearly the department's expert, the parents cannot fairly participate without being able to call their expert.
>
> …

> [229] Expert testimony, because of its very nature, despite all the jurisprudence to the contrary, carries itself through the child protection hearing with an air of authority that tends, often undiscernibly, to undermine the probative value of "non-expert" testimony. The observations of those who work with the parents or a child each day become swallowed up by experts and spit out in language that appears to transform and eviscerate the probative value of lay evidence.

Fortunately, in this case, we have two opposing experts. Furthermore, we even had one listen by telephone to an important part of the testimony of the other. Lay evidence was not cast aside nor minimized. Indeed, the experts both tended to validate much of what many of the experienced lay people had to say.

[74] Dr. Allan Wade received his Ph.D. in psychology from the University of Victoria in 1999. He is an expert in several areas, but for purposes of this protective intervention hearing, he was qualified to testify about the response of victims and interpersonal violence. Counsel for K.N. filed a 65 page report which was comprehensive, insightful, and thorough. Registered in B.C. as a clinical counsellor, Dr. Wade served as a consultant to K.N.'s team of supporters for no fee.

[75] K.N. was interviewed by Dr. Wade for about 12 hours in total over a time-frame of four months, starting in the fall of 2012. His participation was requested by Renée-Claude Carrier, the Assistant Director at Kaushee's Place. In preparation of his report he interviewed six other people, reviewed a video of a visit between K.N. and A.N., read numerous affidavits and reports, and listened, by telephone, to over one hour of the testimony of Dawn Oiffer, the expert called by CFS.

[76] Dr. Wade enlightened us in numerous areas but particularly in terms of understanding K.N. as victim and her responses and resistance to "specific instances

and forms of interpersonal violence and oppression" as well as negative and positive social responses. He wrote at para. 6 of his report:

> Domestic and other forms of interpersonal violence, such as sexualized assault, present special challenges for criminal justice and human services professionals. This is due in part to the fact that the relevance of interpersonal violence and other forms of trauma for mental health has been largely ignored until recently. …

[77] In a critique of various professionals, Dr. Wade makes the point over and over again that K.N. was subjected to extreme violence on numerous occasions with little acknowledgement or understanding as to how that may have affected her. The aspect of K.N.'s complex grief is, by most, largely or totally ignored. Dr. Wade felt K.N. opened up to him because he was more interested in her total life experience.

[78] Dr. Wade was very much concerned about the psychological testing of K.N. and the interpretation of the results.

> The MMPI-2 and MCMI-II and MCMI-III do not predict parenting capacity or parenting behaviour. Their use in a parenting capacity assessment is therefore questionable at best, particularly where there is clear evidence that interpersonal violence is at issue, as in this case.
>
> …
>
> Numerous scholars have found that "evaluators frequently neglected assessment of domestic violence and child abuse" (Davis, M.S., O'Sullivan, C.S., Susser, K., & Fields, M.D., 2011; Logan, Walker, Jordan, Horvath, 2002, p. 735; Horvath, Logan, Walker, 2002, p. 562), and that "evaluators do not explore domestic violence as a way of attending to the child's safety interests".
>
> …
>
> Erickson, N. (2005) and Erickson, N. & O'Sullivan, C. (2011) found that forensic psychologists often put battered women at risk by awarding custody to abusive partners. **They stress that domestic violence must**

> **be taken into account fully in parenting capacity and custody and access decisions: "Evaluators have sometimes misinterpreted MMPI and MMPI-2 data, 'diagnosing' battered women with serious psychopathologies when in fact they suffer from depression and anxiety, or even PTSD, caused by the abuse."**

[79] While I do not accept all of Dr. Wade's observations and conclusions, I fully agree with his assessment of Chronic Post Traumatic Stress Disorder. His analyses of the reports of Dr. DeFreitas, Dr. Kropp and Ms. Oiffer are helpful.

> The most significant difference in diagnostic criteria between PTSD and BPD [Borderline Personality Discorder] is the presence or absence of violence and trauma, or more broadly, "a recognizable life stressor". This means that from a differential diagnosis perspective, to apply the diagnosis BPD, the presence of violence and trauma history must be considered in detail and explicitly ruled out as a significant factor. ***If the presence of a significant violence and trauma history is omitted from consideration, as it is in the report by Ms. Oiffer and in earlier reports and recent affidavits, the patient may be wrongly diagnosed with BPD when a diagnosis of PTSD is indicated.***

As to the significance between Borderline Personality Disorder and Chronic Post Traumatic Stress Disorder and the outcomes one might expect, Dr. Wade stated succinctly at page 56 of his report:

> BPD and PTSD imply very different origins, treatment approaches, and outcomes. The likely outcomes for PTSD are very positive, providing professionals begin by acknowledging and validating the client's experience and establish social safety as a first priority.

[80] Dr. Wade was critical of Ms. Oiffer's statement about K.N.'s responses and her observation that "she frequently finds herself in stressful situational circumstances". He objected to the strong implication that if K.N. "finds herself" in these circumstances it suggests that they are of her own making.

[81] While K.N. has made great progress in recognizing potentially abusive men and not getting involved with them, she clearly put herself squarely in R.B.'s life despite repeated loud and clear warnings from the other female inmates to not get involved in any way with R.B. as he was dangerous and "bad news". Yes, K.N. was at another low point in her life but really should have taken this advice from these women who were trying their utmost to steer her clear from R.B. K.N.'s subsequent involvement with him, including drug use and an early pregnancy, was clearly of her own making.

[82] On the issue of K.N.'s violence towards A.R., at page 16 of his report, Dr. Wade stated:

> …Socially isolated, angry and desperate, and confused by sleeplessness along with alcohol and drugs, K.N. then formed the intent to assault A.R.
>
> K.N. was incarcerated after pleading guilty. As a result of pleading guilty, however, she did not have a chance to tell her story in court.

[83] K.N. did have avenues open to her "to tell her story in court".

1. Her lawyer speaking on sentence;
2. A thorough Pre-Sentence Report;
3. K.N. could have addressed the Judge directly before sentence.

[84] Throughout his report, Dr. Wade, very persuasively sets out how repeated violence and negative social responses affected K.N. Nonetheless, with the supports well established in her life, K.N. must better control her impulsivity and her criminal behaviour. Examples here are numerous but include the attack on the off-duty WCC guard, the incident at Boardstiff, theft at Walmart and the most recent assault on a police officer just two and a half months ago.

[85] Throughout this protective intervention hearing involving K.N., her case appears to have been adequately funded. She has been given very capable legal representation and has had an incredible team of supportive professionals including Dr. Wade.

[86] In conclusion, Dr. Wade respectfully recommended:

1. That A.N. be returned to the care of K.N. promptly, allowing for a period of transition, with rigorous safety planning.
2. That K.N. submit proof she is not using alcohol or drugs, by any number of means, including hair analysis.
3. That FCS participates in a “circle of safety”, with other key service providers, to monitor safety and progress over the next year.
4. That A.N. continue with the child development and other service providers she is currently seeing, as this is of great benefit.
5. That A.N. and K.N. remain in contact with the foster family, to the maximum extent possible given their time and energy, as they have become a profoundly important and positive force for all concerned.
6. That K.N. continues to pursue counselling directed at promoting recovery from violence and substance abuse.
7. That K.N. continues to see Dr. Heredia on a regular basis, primarily to monitor and change medications as K.N.’s recovery proceeds.
8. That K.N. focus on developing friendships and activities outside the circle of professionals and family and seek employment and/or further education.
9. That participants in the “circle of safety” seek external consultation, to assist with their work and provide an added layer of accountability.

[87] The Court was patiently and creatively working towards this end, but ultimately the future risk to A.N.’s emotional or psychological well-being was too great to have her return to her mother.

[88] Dawn Oiffer is a seasoned and respected registered psychologist in Alberta. At the request of the Director of Family and Children's Services, she filed a 41 page report largely drawn from departmental documentation. Also in her preparation there were nine hours spent with K.N. at WCC back in April 2012, a recorded visit with A.N. and K.N. at WCC, some time with A.N. at the foster home, numerous documents provided by K.N., including letters of support, certificates of training, etc. She has always testified as an expert for the Director in child protection cases.

[89] Dawn Oiffer was contracted by the Director to prepare a parenting capacity assessment and examine the individual functioning of K.N. This report was prepared in an accurate and detailed manner setting out the considerable history of child protective services with K.N. Ms. Oiffer also laid out the details of K.N.'s incarceration, support system, substance abuse, and relationships.

[90] K.N. was quite candid with her about these subjects. While Dr. Wade felt K.N. was able to open up more to him because of his interest in her total life experience, it is to be noted that K.N. provided many important insights to Dawn Oiffer.

[91] For example, on page 10 of her report the positive role of two men was discussed.

> Her mother's partner, G and her brother-in-law, C were named as important facilitators in terms of her relationships with her mother and her sister – "they're kind of like my advocates … my allies." "My mother and my sister take everything I do extremely personally, like I'm doing it to hurt them." She indicated that these men had helped to bridge the angry upheavals that recurred between herself and her family and that without them perhaps, "I wouldn't have a relationship with my family."

[92] Another example of Dawn Oiffer's balanced approach can be found in the discussion of her cocaine and prescription drug abuse shortly before A.N.'s birth.

> …However, the BC Ministry (Child Protective Services) became involved with K.N. and A.N. when advised that she had overdosed on prescription medication during the pregnancy and that approximately one month before A.N.'s birth, she had self-disclosed a use of crack cocaine. (Tests were positive for cocaine and benzodiazepines). K.N. is said to have engaged well with the variety of services provided in Prince George and, in fact facilitated a group called "mothers for recovery."

[93] In discussing attachment relationship, Ms. Oiffer clarified that it is really about protection and not just interactions. The 40 minute observation of K.N. and A.N. together, observed by Ms. Oiffer, occurred at WCC. Two problems included the setting itself and that the time was normally A.N.'s nap time. Dawn Oiffer pointed out that "elements of A.N.'s behaviour do resemble insecure resistant behaviour". K.N. testified that this was the worst visit she had had with A.N., and I believe her.

[94] On the other hand, at A.N.'s home with her foster mother, S.L.K., there was no observance of any insecure attachment. This is not particularly surprising as A.N. was spending so much quality time with S.L.K. and was comfortable and relaxed in the home setting.

[95] The video footage by Renée-Claude Carrier around the timing of Christmas, 2012, showed a good visit between daughter and mother. K.N. displayed really good parenting skills and interacted extremely well with her daughter. Both were appropriately engaged throughout. There was nothing I saw to give me any concerns about bonding nor relationship attachment. Ms. Oiffer noted that K.N. at her best would be better than your average parent and that K.N.'s intelligence was also above average.

That is what makes this protective intervention hearing so different than most wherein the parent(s) are just not capable of providing a safe and nurturing environment for the child.

[96] In the penultimate paragraph of her report commencing at p. 36, Dawn Oiffer stated as follows:

> Among K.N.'s several strengths are her intellect, her immediate capacity to project likeability and engage others and the considerable support she has been able to claim from her family. All three letters of reference submitted by K.N. with regard to parenting endorse her affection for A.N., her positive efforts and intentions and her capacity to be a competent parent. In the letter of reference she solicited from her sons, there is a straightforward qualification that captures the most realistic and relevant concerns – "if she continues getting help from her supports and sticks to what she said she would do." She has yet to demonstrate that she can do so on a sustained basis. One hopes she will eventually manage the competent self-regulation, sobriety and rule-following required for reliable parenting. K.N. has yet to reach the six-month period of stability defined by the Director and she has hard work ahead to address the problems of self-regulation and substance abuse. It is not possible to determine the length of time required for her to achieve the same, but these are likely to be the tasks of years, rather than months. …

[97] Ms. Oiffer's opinion was that A.N. not be returned to K.N. and that the Director's application for a continuing custody order be granted. (p 37 of Oiffer report)

> In the intervening time, A.N.'s potential outcomes improve if she is subject to committed caregiving, rather than temporary placement. There are glimpses of, at least a difficult temperament in this child and implications for the provision of a particularly steady, mature and perceptive caregiver able to provide competent external regulation, sensitive response and *clear, consistent* limits and boundaries. Her best interests appear to be served by proceeding with permanency plans.

State Intervention and Family Court Proceedings

[98] The B.C. Child Protection Services, upon becoming aware of K.N.'s drug abuse, seriously contemplated intervention at birth but decided against it as K.N. made some very positive changes since coming to their attention.

[99] A.N. came to the attention of CFS in the Yukon in October, 2010 as a result of K.N.'s being charged under the *Criminal Code.* A.N. was placed with family for 72 hours. K.N. and the Director signed an agreement on October 13 with a number of conditions including; no contact with R.B., residence at Kaushee's Place, abstention from alcohol and drugs, follow-through with social workers, counselling, etc.

[100] The actual apprehension with a warrant took place on 20 January 2011.

[101] Recognizing that she was not able to care for her youngest daughter, K.N. consented to temporary custody orders on 17 February 2011, 11 August 2011 and 23 February 2012.

[102] The Director filed her application for a continuing custody order on 31 May 2012.

[103] On 25 July 2012, Cozens C.J.T.C. ordered that A.N. shall remain in the custody of the Director on an interim basis until further order of the Court pursuant to s. 79(3)(b) of the *Act.*

[104] This protective intervention hearing commenced on 28 January 2013 and continued that entire week. During this time we heard from social workers Jacqueline Clune, Tracey Rumbolt and Alla Blysak, then S.L.K. (foster mother), Claire Levesque, development therapist at CDC, Renée-Claude Carrier, Assistant Director at Kaushee's

Place, Barbara Curtis, outreach worker at Whole Child Program and Helen Allan, child care worker at Kaushee's Place. The latter three were witnesses called by the mother. K.N. took the stand on 1 February 2013, and testified until 6 February 2013.

[105] With the consent of counsel, flexibility was allowed in the order that the witnesses were called.

[106] Dawn Oiffer was heard on 6 and 7 February 2013. K.N. testified again on 8 March 2013 to explain why she did not complete the Residential Substances Abuse Program.

[107] It had already been determined that Dr. Wade was unavailable until early March. He testified on 7 and 8 March 2013.

[108] Arguments from Ms. McPhee and Ms. Hawkins took place on 14 March 2013, following receipt of written submissions from them. Ms. Morris' position was clearly outlined in writing.

[109] On 14 March 2013, I determined, pursuant to s. 59 of the *Act,* that a current psychological report on the mother, K.N. would assist the Court in "making an order in relation to the child". Counsel for K.N. advised that Bill Stewart, a respected local psychologist, had consented to do the report. He was asked to focus on K.N.'s substance abuse and criminogenic factors.

[110] The Court was well aware that we had moved beyond the time limitations set out in the *Act.* However, the lengthy hearing took place in an expeditious manner once

started. It was reasonable that at least a few weeks were required to prepare a judgment.

[111] Furthermore, A.N. was not at a critical point in her life at the age of three and a half. She was not about to go to school, nor were there any medical problems, moving out of town or anything of that nature. This extra time from 14 March 2013 to 7 June 2013 was not particularly significant to A.N. in my opinion, and certainly not contrary to her best interests.

[112] Indeed, having the right decision made for her, was clearly in A.N.'s best interests. The Director, throughout, wanted to see from K.N. a period of six months stability. Given all that had transpired with K.N., not so much between 2006 to the first half of 2010, but mostly since her return to Whitehorse in the summer of 2010, this amount of stability was a fair and reasonable request.

[113] Since her release from custody in early December 2012 until mid-March 2013, there were just over three months of great progress on K.N.'s part. The reunification of mother and daughter seemed possible, in my view. Dr. Wade had argued that the stability in the WCC from September 2012 should have been added in the sense that K.N. was a well-behaved prisoner, making good use of her time. That undoubtedly was the situation for K.N., but clearly the WCC is not a normal life experience.

[114] Under these exceptional circumstances, I was prepared, after very careful consideration, to creatively make use of s. 59 to obtain the further psychological report from Bill Stewart which would definitely be of some assistance to the Court, notwithstanding the volumes of evidence, including reports that we already had.

[115] In making this decision, I was mindful of the S.C.C.'s direction in *C.M.* v. *Catholic Children's Aid Society of Metropolitan Toronto and Official Guardian* [1994] 2 S.C.R 165:

> 47 While cases of this nature necessarily imply the application of statutes and legal norms, they inescapably touch on human emotions and are inextricably linked when the determination of the fate of young children and the natural desire of parents to bring up their children collide. Every judge in this country would probably prefer not to have to make these difficult decisions. But, in the last resort, courts have to decide and, in order to decide, the law as written by legislatures must be their guide.
>
> …
>
> 49 As I stated earlier, time is of the essence in proceedings concerning the welfare of children. Every effort should be made to accelerate hearings of these matters so as to minimize any prejudice to all parties and to avoid that a certain state of affairs occurs.

[116] The stated purpose of my limited use of s. 59 in these exceptional circumstances was to obtain the report. Anyone reading between the lines would accurately and fairly realize that K.N. was being given an unusual opportunity to demonstrate the six months of stability.

[117] Without judging what might have been, it is fair to say that the supervision order sought by K.N., may have been the outcome, depending of course on the contents of the s. 59 report, K.N.'s continuing progress, A.N.'s needs, etc.

[118] Regrettably, this hope was dashed. As stated above, K.N. committed criminal offenses on 1 April 2013, having consumed alcohol. On 9 May 2013, K.N. breached her conditional sentence order by failing to comply with her curfew. On this occasion she was not under the influence of alcohol. The alleged criminal assault on J.K. is set for trial on 30 July 2013.

[119] On 18 April 2013, this protection intervention hearing continued with the Court cancelling the order for the s. 59 report with the consent of all three counsel. I was advised of the 1 April 2013 charges and the sentences imposed.

[120] We resumed sitting on 3 June 2013. Ms. McPhee updated the Court as to the conditional sentence order breach and the s. 266(b) *Criminal Code* charge, and the Court heard further submissions from all three counsel. Only the position of the Child's Lawyer, Ms. Morris, had changed so that conditions she had recommended no longer attach to the continuing care order. Those conditions had included A.N. "not be placed for adoption, except with K.N.'s consent for a period of four months. During that four-month period…K.N. be provided a high and consistent level of access, including overnight visitation. On conclusion of the four month period, if K.N. appears to be able to provide a safe home for A.N. then… the continuing care order be terminated pursuant to s. 69 of the *Act".*

Application of the Law

[121] The current *Child and Family Services Act* came into force on 30 April 2010.

[122] Important parts of the *Act* for this decision include:

> PREAMBLE
>
> WHEREAS
>
> Canada is a signatory to the United Nations Convention on the Rights of the Child;
>
> Every child is entitled to personal safety, health and well-being;
>
> Children are dependent on families for their safety and guidance and as a result, the well-being of children is promoted by supporting the integrity of families;

Every child's family is unique and has value, integrity and dignity;

Members of society and communities share a responsibility to promote the healthy development and well-being of their children; and

This Act has been developed through the combined efforts of representatives of the Government of Yukon and First Nations as well as groups and organizations with an interest in the welfare of children.

SECTION 2

Guiding principles

2 This Act shall be interpreted and administered in accordance with the following principles

(a) the best interests of the child shall be given paramount consideration in making decisions or taking any action under this Act;

(b) a child has a right to be protected from harm or threat of harm;

(c) knowledge about family origins is important to the development of a child's sense of identity;

(d) the cultural identity of a child, including a child who is a member of a First Nation, should be preserved;

(e) family has the primary responsibility for the safety, health and well-being of a child;

(f) a child flourishes in stable, caring and long-term family environments;

(g) the family is the primary influence on the growth and development of a child and as such should be supported to provide for the care, nurturance and well-being of a child;

(h) extended family members should be involved in supporting the health, safety and well-being of a child;

(i) a child, a parent and members of their extended family should be involved in decision-making processes regarding their circumstances;

(j) First Nations should be involved as early as practicable in decision-making processes regarding a child who is a member of the First Nation;

(k) the safety and well-being of a child is a responsibility shared by citizens; and

(l) prevention activities are integral to the promotion of the safety, health and well-being of a child.

SECTION 3

Service delivery principles

3 The following principles apply to the provision of services under this Act

(a) in making decisions, providing services and taking any other actions under this Act, a child's sense of time and developmental capacity should be respected;

(b) families and children should receive the most effective but least disruptive form of support, assistance and protection that is appropriate in the circumstances;

(c) programs and services should be planned and delivered in ways that are sensitive to the cultural heritage of the families participating in the programs or receiving the services;

(d) communities should be involved in the planning and delivery of programs and services to their residents;

(e) First Nations should be involved in the planning and delivery of programs and services to their members;

(f) collaboration builds on the collective strengths and expertise of children, families, First Nations, and communities; and

(g) a child and members of the family and extended family should have an opportunity to seek a timely review of decisions made under this Act which affect them.

SECTION 4

Best interests of the child

4(1) In determining the best interests of the child all relevant factors shall be considered, including

(a) the child's safety, health and well-being;

(b) the attachment and emotional ties between the child and significant individuals in the child's life;

(c) the views and preferences of the child;

(d) the child's physical, cognitive and emotional needs and level of development;

(e) the importance of continuity and the resulting stability to the child, and the effect of any disruption in that continuity;

(f) the child's cultural, linguistic, religious and spiritual upbringing and heritage;

(g) the importance to the child of an on-going, positive relationship with their parents and with members of their extended family;

(h) the ability of a proposed care provider for the child to fulfill parental responsibilities;

(i) the role assumed by a proposed care provider during the child's life; and

(j) any history of family violence or child maltreatment perpetrated by a prospective care provider, and the effect on the child of any past experiences of family violence or maltreatment.

(2) If a child is a member of a First Nation, the importance of preserving the child's cultural identity shall also be considered in determining the best interests of the child.

…

SECTION 21

When protective intervention is needed

21(1) A child is in need of protective intervention if the child

(a) is, or is likely to be, physically harmed by the child's parent;

…

(c) is, or is likely to be, emotionally harmed by the conduct of the child's parent;

…

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

…

SECTION 57

Order at conclusion of protective intervention hearing

57(1) At the conclusion of a protective intervention hearing, a judge shall determine whether a child is in need of protective intervention.

3) If the judge determines that the child is in need of protective intervention, the judge shall so declare and make one of the following orders

(a) that the child be returned to or remain in the care of a parent apparently entitled to custody under the supervision of a director for a specified period of not more than 12 months;

…

(d) that the child be placed in the continuing custody of the director.

…

SECTION 59

Psychiatric or medical examination orders

59(1) On the request of a party to an application under this Division, a judge may order that a child or parent undergo a medical, psychiatric or other examination if the judge considers the examination is likely to assist the judge

(a) in determining whether the child is in need of protective intervention; or

(b) in making an order in relation to the child.

[123] Judge Ruddy in *J.L. (Re),* 2012 YKTC 20 cited with approval *B.S.* v *British Columbia (Director of Child, Family and Community Service)* (1998), 48 B.C.L.R. (d) 106 (B.C.C.A.). In particular she referred to the following paragraphs:

26 I do not have any doubt that the burden of proof in child protection cases rests on the person who asserts the need for protection. Nor do I have any doubt that the standard of proof is the standard in civil cases, namely, the standard usually called “the balance of probability”. Sometimes, in applying the standard, the seriousness of the allegation being made is thought to require a higher and more particularized measure of confidence on the part of the decision maker that the balance of probability test has been met. But the test remains the same. The

> weight of the evidence must show that it is more probable than not that the assertion being made is correct.
>
> 27 When the assertion being made is about a past event then the actual occurrence of that event must be shown by the weight of the evidence to have been more probable than not. That is the case with past abuse, neglect, or harm to a child.
>
> 28 But where the assertion being made is that there is a risk that an event will occur in the future, then it is the risk of the future event and not the future event itself that must be shown by the weight of the evidence to be more probable than not. That is the case with consideration of a threat of future harm.
>
> 29 The result is that in considering past abuse the degree of certainty that it has occurred will be more than is required in considering whether abuse will occur in the future.

[124] In paragraphs 51 and 52 of her decision, Judge Ruddy stated:

> 51 The court goes on, in paragraph 30, to define what constitutes a risk of future harm as "a risk that constitutes a real possibility".
>
> 52 Counsel for C.P. and counsel for the child take no issue with this articulation of the test to be met in considering whether there has been past harm and whether there is a risk of future harm.

I agree fully with this statement of the law.

[125] In *J.L.* both Chief Judge Cozens in an earlier application for a temporary custody order (2011 YKTC 61) and Judge Ruddy in her decision found that th*e*re was no significant risk of physical harm.

[126] At paragraph 56 of her decision, Judge Ruddy ruled:

> 56 With respect to the likelihood of future harm, the Director concedes that there have been no instances of physical harm since the prior hearing. Nor is there anything, in my view, which has occurred since that hearing to raise the likelihood of future physical harm to J.L. to the level of a 'real possibility'.

[127] Similarly here, the Director has conceded no risk of physical harm since January 2011. Indeed the evidence has shown that K.N. has taken positive steps to prevent A.N. from exposure to violence or even the physical appearance of the aftermath of violence that she herself had endured. K.N. wisely chose to forego a visit when her face bore the evidence of having been beaten. She did not want A.N. to see her like that.

[128] The Director has failed to prove on a balance of probabilities that there is a future risk of physical harm to A.N. either to be caused by or permitted to happen by K.N. The weight of the evidence does not show that the risk of physical harm is more probable than not.

[129] The larger question here as it was in *J.L.* has to do with the risk of A.N. being emotionally harmed by K.N.

[130] In *J.L.* the mother, C.P. was diagnosed by Dr. Heredia, her treating psychiatrist, as “suffering from schizophrenia, paranoid subtype with non-bizarre delusions and disorganized thinking”.

[131] In that case, as well as here, periods of stability were closely examined. For C.P., Dr. Heredia “noted the importance of seeing a good period of stability in the range of six months before he would recommend graduated supervised visits let alone a return of J.L. to C.P.’s care”.

[132] In terms of some demonstrated stability by C.P. for less than four months as a result of Clopixol by injection, but aware that environmental stressors having “triggered rapid de-compensation of C.P.’s mental state in the past”, Judge Ruddy concluded:

> 69 On balance, I am simply not satisfied that this period of stability has been of sufficient duration to satisfy me that the risk of future emotional harm has been reduced below the standard of a 'real possibility'.

[133] K.N.'s mental health is not in the same category of C.P. Compared with C.P, K.N. has a more favourable outlook. As noted above, Dr. Wade stated at page 56:

> …The likely outcomes for PTSD are very positive, *providing professionals begin by acknowledging and validating the client's experience and establish social safety as a first priority.*

[134] As a result of his report and testimony, the court is fully aware of the proviso he includes. As her substantial team of caregivers becomes aware of this court decision and Dr. Wade's report, that underlying theme of the importance of positive social responses should be forming the basis of all, not just some of her therapy and support. She will continue to be better understood.

[135] K.N. has been involved with a substantial support system or network. Most, if not all, including Dr. Wade insist on sobriety and some level of stability. Legislatively and practically we cannot wait for a further prolonged time for this to take hold in K.N.'s life. By ruling that there must be a continuing custody order now, I am focused on what is in the best interests of A.N. This judgment is not meant to be in any way another negative social response to K.N. Further, it is not intended to punish her or make any adverse conclusions as to her character. Deep down, K.N. is a good person and well intentioned. She clearly loves A.N. However, it is not fair to A.N. to subject her to a substantial risk of unstable future behaviour by K.N. which will emotionally harm her.

[136] As Judge Ruddy so succinctly stated in S.K.*R. (Re),* 2005 YKTC 68 at para. 50, “Unfortunately, S. [the child] deserves more than good intentions to ensure that he has the future he deserves”.

[137] Before concluding, I want to emphasize two issues which had no bearing on the way this case was decided.

[138] Throughout her dealings with the child protection authorities, K.N. was always very co-operative, signing consents, taking advice, attending meetings and so on. Once she received Dawn Oiffer’s report and became aware that the Director was seeking a continuing custody order, she offered information in a very limited manner, on a need to know basis. Although some concerns were expressed by the social workers as to this approach by her, it was understandable given what was at stake and the fact that she was preparing for a lengthy hearing.

[139] Also, I feel compelled to address the topic of poverty. K.N. at many times in her life was gainfully employed. She is industrious and hard-working. K.N. does not want to sit back and remain on social assistance. She recognizes her need for more career training and that is her plan. The Director has suggested that the extra financial pressures K.N. would have if A.N. were with her is “likely to be a very real challenge”.

[140] It is not a just society if the state can spend tens of thousands of dollars on a protective intervention hearing and yet not be able to offer the necessary temporary support to a mother who would be attempting to better herself career wise with her child. Poverty is in no way an issue in this case.

Conclusion

[141] The only options available to me under the *Act* are s. 57 (3)(a) and s. 57 (3)(d). For the reasons outlined above, it is not in the best interests of A.N. to return to her mother under a supervision order. It is clearly in her best interests to have a stable, nurturing and safe environment in which she may fully develop. The Court makes the order that A.N. be placed in the continuing care of the Director.

[142] I was pleased to hear that substantial efforts will be made to place A.N. for adoption in due course with extended family, if at all possible. The important exercise of Family Group Counselling which is at arm's length to the Director will commence reasonably soon. K.N. and her family will be key players. Vuntut Gwitchin First Nation will be involved. No lawyers will be present. This is an essential and crucial step before the adoption process is engaged.

[143] I extend deep appreciation to all three counsel. Their well-prepared and articulated advocacy is acknowledged. Their work was instrumental in this case proceeding as it did, in a thorough and professional manner.

_____

LUTHER T.C.J.