Citation: *In the matter of J.L. Jr., 2012 YKTC 20* Date: 20120223
Docket: 10-T0006
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: Her Honour Judge Ruddy

IN THE MATTER OF THE *CHILD AND FAMILY SERVICES ACT,*
R.S.Y. 2008, c. 1 and J.L. Jr.

Appearances:

Tara Grandy	Counsel for the Director
Kim Hawkins	Counsel for the mother, C.P.
Norah Mooney	Child's Lawyer

REASONS FOR JUDGMENT

[1] The Director seeks a continuing care order in relation to five year old J.L., pursuant to s. 57(3)(d) of the *Child and Family Services Act,* R.S.Y. 2008, c.1. J.L.'s mother, C.P., opposes the application and seeks the return of J.L. on a one-year supervision order pursuant to s. 57(3)(a). J.L. Sr., J.L.'s father, has had little to no involvement in J.L.'s young life. He has had no involvement in these proceedings, and has previously been found not to be a concerned parent by this court.

History of Child Protection Proceedings:

[2] J.L. is the fourth child and only son of C.P., a 28-year-old member of the Tahltan First Nation.

[3] Twin daughters born in January of 2001 and a third daughter born in December of 2001 were each taken into care in their infancy due to concerns relating to C.P.'s mental health, neglect, instability, and inability to meet their basic needs. They were ultimately placed with extended family. C.P. is able to visit with each of these children 3 to 4 times each year. J.L. was born in November of 2006.

[4] The Director's involvement with C.P. and J.L. began prior to J.L.'s birth due to identified child protection concerns. With extensive support from the Director and others, C.P. was able to effectively parent J.L. for some time. The status of the file changed from a child protection to a family service file in October, 2007 and was ultimately closed in February, 2008.

[5] Unfortunately, concerns regarding C.P.'s parenting skills led to further involvement with Family and Children's Services in July, 2009. With renewed supports, C.P. was able to continue parenting J.L. The status of the file, however, was once again elevated to a child protection file in March, 2010 due to concerns about C.P.'s mental health.

[6] An RCMP report of unsafe conditions in C.P.'s home, including mouldy food in the kitchen and living area and fire safety hazards throughout the apartment, resulted in J.L. being taken into care on April 19, 2010. He has remained in the full-time care of the Director since that date.

[7] The Director's application for a temporary custody order along with C.P.'s cross-application for access to J.L. were both heard in December 2010 before His Honour

Judge Cozens who granted a six month temporary care order and an order for supervised access on January 7, 2011: see *J.L. (Re),* 2011 YKTC 61.

[8] On June 24, 2011 the Director filed this application for a continuing custody order. Evidence at the hearing consisted of numerous affidavits and exhibits in addition to nine days of testimony from thirteen witnesses spread over dates in October, November and December, 2011, with final arguments proceeding on December 6 and 7, 2011. This decision was reserved to allow for review and consideration of the extensive evidence.

The Evidence:

[9] I have considered the evidence in its entirety, but given the overwhelming volume, it is simply neither possible nor particularly helpful to include an exhaustive review for the purposes of this decision. In considering the evidence, I would note that there were, at times, differences in the evidence as provided by the Director's witnesses and C.P.'s recollection of events. While I accept that C.P. was doing her very best to be truthful when giving her evidence, I find that both her perception and her recollection of events is distorted by her mental disability, particularly during those times when her mental health was actively deteriorating. Where there is a conflict between the evidence of the Director and that of C.P., I prefer the evidence of the Director.

[10] For the sake of simplicity, I have divided what I consider to be the key pieces of evidence relating to actual or potential child protection concerns into three broad categories:

1. Incidents of inappropriate behaviour in the presence of J.L.;

2. C.P.'s mental health; and
3. C.P.'s efforts to address the child protection concerns.

1. Incidents of Inappropriate Behaviour in the Presence of J.L.:

[11] A number of incidents have been identified, occurring primarily during access visits, which raise concerns about C.P.'s behaviour in the presence of J.L. These incidents have resulted in the early termination or cancellation of visits, and, at times, the suspension of access altogether.

- **The April 22, 2010 Incident:**

[12] The first incident occurred shortly after J.L.'s apprehension. On April 22, 2010, C.P. attended at the Family Support Office for a visit with J.L. Shortly thereafter, C.P. fled the building with J.L. in her arms, his pants down around his knees and his diaper partially removed. C.P. was screaming that her child had been raped and violated. She approached a woman on the street, asking her to witness what had been done to her son. She spread the cheeks of J.L.'s buttocks apart with her hands, and asked the woman to note that J.L. had a dark ring around his asshole and he smelled of shit. She asked the woman to witness that J.L. had been raped.

[13] Social Worker Doreen Pardy attempted to calm C.P., but she continued to yell at passers-by that her son had been violated and that welfare had let him be used as a piece of meat. She continued to spread his butt cheeks and asked passers-by to witness that he had been abused.

[14] After several minutes, Ms. Pardy was able to persuade C.P. to return first to the Family Support Office and then to the Family and Children's Services Office. C.P.'s

behaviour continued to escalate. She again partially unclothed J.L. and insisted the Family and Children's Services staff witness that he had been abused. RCMP members were called to assist, and C.P. was ultimately persuaded to return home while Ms. Pardy took J.L. to the hospital to be examined. Dr. Sally MacDonald examined J.L. and determined that there was no evidence of any trauma to the anus or penis indicative of abuse.

- **The April 27, 2010 Incident:**

[15] C.P. attended at J.L.'s foster home. The foster parent came out to speak to her in the back garden. J.L. came out of the home through the dog door and went to his mother. The foster parent noted there to be three rocks in C.P.'s purse. The foster parent went to the back door to ask her grandson to call the RCMP or Family and Children's Services. C.P. lifted J.L. over the back fence and then climbed over it herself. When the foster parent went towards the fence, C.P. took a rock out of her purse and threw it at the foster parent who was able to block it with her hand.

[16] C.P. was located by the RCMP and charged with assault and abduction in contravention of a custody order. Due to concerns with respect to her mental health, C.P. was assessed at the East Coast Forensic Hospital in Halifax. She ultimately pleaded guilty to common assault and received a six-month conditional discharge, which she completed without incident.

- **The July 13, 2010 Incident:**

[17] At an access visit on July 13, 2010, C.P. noted marks on J.L. and asked who had hurt him. She was advised that he had developed a skin infection known as impetigo

for which the doctor had prescribed an antibiotic cream. C.P. asked J.L. who had hurt him and told him those people "not being of blood" are more likely to hurt him. She raised her voice and began swearing.

[18] C.P. was advised that the visit was being cancelled because of her behaviour. She initially agreed, saying that she was going to speak to her lawyer, but then indicated that she had the right to her visit. She put her arms around J.L., asked him if he wanted to leave these people and told him he could call 911 if anyone hurts him. C.P. ultimately left after saying to Ms. Pardy "you bitch, you came into this picture; you're a liar; you can go out of this picture" in what is described by Ms. Pardy as a threatening and intimidating manner.

- **The September 2, 2010 Incident:**

[19] At an access visit supervised by Family Support Worker Belinda Poyntz, C.P. took J.L. to the bathroom. She pulled down his pants and put him on the toilet even though he indicated that he did not want to go. When he got off the toilet, she picked him up and proceeded to pull his butt cheeks apart. When asked what she was doing, she indicated she had been told to look for shit. She was instructed by Ms. Poyntz to pull up J.L.'s pants but proceeded to pull his butt cheeks apart two more times before finally pulling up his pants.

- **The October 14, 2010 Incident:**

[20] At the conclusion of an access visit supervised by Belinda Poyntz and Chris Pinkerton, J.L. began to cry when told to clean up the toys. C.P. grabbed J.L. and began yelling at Ms. Poyntz and Mr. Pinkerton, asking whether they had hurt J.L. C.P.

left the room stating she was leaving with J.L., although she did not attempt to leave the building with him.

- **The May 18, 2011 Incident:**

[21] During an access visit supervised by Social Worker Jacqueline Clune, C.P. told J.L. he was taken away because he did not listen. When instructed to change the topic, C.P. stated that J.L. needs to understand that he has to listen to her and told the workers that J.L. is coming home. She was again told to change the subject and reminded that J.L. has difficulty understanding her when she uses large words and long sentences. C.P. said, "He's smarter than you think. He needs to understand that he can't come home if he's not listening. She's bigger than me J.L. I'm short and wide. She's tall and I can't keep fighting her. You need to listen." When redirected for a third time, C.P. finally complied.

- **The June 1, 2011 Incident:**

[22] At the end of an access visit, J.L. resisted getting in the car seat. C.P. walked by and waved. J.L. ran to her and asked for one more hug. C.P. told him he had to return with the worker and she would see him on Monday. C.P. began to walk away. J.L. asked for one more hug and began screaming and crying. At that point, C.P. became upset and began yelling that this organization needs to be brought down and she was going to bring the building down.

[23] When asked about this incident, C.P. says that in saying she was going to bring the Family and Children's Services building down she meant the department keeping her from J.L. was going to be 'ruled out', meaning they wouldn't be able to keep him

from her. She says she was not angry, but just said this for her own peace of mind. She was publicly standing up for her rights and does not believe that she was out of line.

- **The June 22, 2011 Incident:**

[24] At a visit at Helicopter Park supervised by Chris Pinkerton and Brooke Sinclair, C.P. became upset at the proximity of the supervisors to her and J.L. Mr. Pinkerton and Ms. Sinclair moved a few feet away, and S.P., C.P.'s father, made efforts to calm her down. When these proved to be unsuccessful, he left the visit after suggesting it may be appropriate to cancel in the circumstances.

[25] C.P. told J.L. "don't let them hurt you, just say no, go to a neighbour's house or call 911. And remember ask for your lawyer and tell them you want to testify in court." When told the visit was being terminated, C.P. pointed at the workers and said "see J.L. that is what evil looks like" and got him to chant "we won't tolerate evil" with her several times. When the workers tried to intervene, C.P. told them "you're going to be struck down either by God or a sniper's bullet". She repeated that she would have them shot several times and went on to say that at the next visit Grandpa would take him home, they would all move to Ontario where she would become rich and would pay to have them shot. As the workers took J.L. back to the car, C.P. began to scream that Family and Children's Services had stolen her son.

[26] During the drive back to daycare, J.L. repeated several times that his mommy was going to shoot the workers; even though he was assured that no one was going to be shot.

[27] When asked about this incident, C.P. said that she was upset as they were in her space and it was not as though she was going to shoot or stab someone; she doesn't have a gun or knife.

2. C.P.'s Mental Health

- **Diagnostic History:**

[28] C.P. has an extensive history of mental health issues dating back to the age of 15. Her initial diagnosis came following her admission to the Royal Alexandra Hospital in Edmonton, Alberta, in 1998, and she was diagnosed as suffering from schizophrenia, paranoid subtype along with a diagnosis of oppositional defiant disorder.

[29] More recently, C.P. was assessed at the East Coast Forensic Hospital in Nova Scotia pursuant to an order under s. 672.12(3) of the *Criminal Code*, relating to the charges of abduction in contravention of a custody order and assault against J.L.'s foster parent as described above.

[30] Noting C.P.'s "history of significant and rapid psychiatric decompensation in the face of environmental stressors", the report, dated June 18, 2010, concludes that C.P. suffered a brief psychotic disorder with marked stressors and notes significant personality traits, including prominent histrionic, narcissistic and, to a lesser extent, possible schizotypal personality traits.

[31] Since J.L. was brought into care, C.P. has been hospitalized on two additional occasions, October 22, 2010 and June 30, 2011, as a result of significant deterioration in her mental state.

[32] Dr. Heredia, C.P.'s treating psychiatrist, was qualified as an expert witness in the areas of forensic psychiatry and general adult psychiatry. He has diagnosed C.P. as suffering from schizophrenia, paranoid subtype with non-bizarre delusions and disorganized thinking.

- **Presenting Symptoms:**

[33] While the evidence raises some concerns about disorientation and memory difficulties, the mental disorder suffered by C.P. manifests itself primarily through symptoms of paranoia, delusions and disorganized thinking. These symptoms are evident in many of the incidents described above, and are further illustrated in the following representative list of examples:

- December 21, 2010: C.P. called Family and Children's Services regarding her concern about J.L. taking melatonin as prescribed by the doctor, and expressed her belief that melatonin causes sociopathic tendencies and something called 'NASH', which she describes as brain death;
- February 11, 2011: at a meeting, C.P. stated that children with blond hair and blue eyes should not get the flu shot;
- March 2, 2011: at a meeting, C.P. made numerous non-contextual biblical references and expressed her belief that Family and Children's Services has a mandate to take children into care and use children who have been sexually abused to rehabilitate them;
- May 4, 2011: following an access visit, C.P. raised a concern about J.L.'s health, stating her belief that J.L. had a fever, his eyes were sunken and black, and that he had pneumonia which could lead to leukemia.
- May 23, 2011: C.P. called Family and Children's Services to raise her concern about J.L.'s emotional well-being and stated that this was a humanity crisis and she had people flying down to Detroit to speak to governors about ongoing psychological stuff.

[34] The predominant delusion is clearly her belief that J.L. has been sexually abused or otherwise harmed while in care. This has coloured her relationship with the Director,

causing her to view them with a great deal of suspicion. The Director's evidence makes numerous references to examples where C.P. has 'escalated' in meetings, becoming angry and verbally abusive.

- **Medication and Medication Compliance:**

[35] Dr. Heredia has indicated that C.P.'s mental disorder can be treated to some extent with medication. He notes that delusions can be resistant to medication and often require that a number of different medications be tried. He says that one cannot be sure that any medication will cure delusions, but that medication can prevent severe exacerbation of psychotic symptoms and hopefully provide some cover for the delusions.

[36] In C.P.'s case, the evidence raised issues with respect to medication compliance. C.P. explained that while there were times that she believed that someone else was picking up her medication for her, she never deliberately avoided taking her medication. She also indicated that she had some concerns about Dr. Heredia's recommendations relating to Seroquel as she found the side effects to be intolerable. Leslie Robert, Program Coordinator for the Second Opinion Society, confirmed that she had some concern about whether C.P. was being overmedicated during this past summer.

[37] Issues relating to medication appear to have been largely resolved. C.P. is now taking Clopixol. She appears to have a good tolerance for it, and has been receiving the drug by way of biweekly injections since July 2011 to address any lingering concerns about compliance.

- **Prognosis:**

[38] What remains in question is the long-term impact of the medication on C.P.'s mental stability.

[39] A letter from Mental Health Nurse Joy Hall, filed as exhibit 2 and dated September 15, 2011, noted that C.P. was medication compliant, had not exhibited significant signs of psychosis, demonstrated fewer religious ideals (although they still continued), and presented a tired affect and slower responses with some tangential speech and a frequent need for redirection.

[40] Dr. Heredia noted his belief that C.P. continued to be preoccupied with delusional thoughts at all of his sessions with her up to and including August 30, 2011. He saw C.P. again on November 1, 2011 at which time he noted no overt delusions. He indicated it was difficult to say if she was cured of her delusions, as, although the medication may affect them, there is no guarantee they will disappear. Dr. Heredia has seen some calming of symptoms and indicated that if he sees a good period of stability, of six months or more, with no exacerbations, he could recommend graduated supervised visits.

[41] Ms. Robert testified that she had not noticed any obsessive thoughts lately and that C.P. seemed calm and stable. For her part, C.P. says that she feels calmer on Clopixol. With respect to her delusion of J.L. having been harmed, she insists that she can now rationalize it was a 'stigma' attached to her, meaning it was linked to her own childhood trauma.

3. C.P.'s Efforts to Address Child Protection Concerns:

[42] While the foregoing tends to paint a very bleak picture of this case, it must be remembered that there are also a number of positive factors to be considered. There is no doubt that C.P. loves J.L. very much, and has worked very hard in her efforts to secure his return. There are numerous instances during periods of relative stability where access visits have been positive and C.P. has demonstrated a high level of cooperation in working with the Director.

[43] In terms of her home environment, C.P. noted that she has worked hard to ensure that her home is clean and safe for J.L. Photographs taken by Leslie Robert certainly confirm that C.P.'s efforts have been successful in this regard. C.P. has completed a cooking skills program through Challenge and now works in the Challenge kitchen. She has also engaged in baking with Tonie Sternbergh.

[44] In terms of her mental health, in addition to taking Clopixol by biweekly injections, C.P. sees Dr. Heredia monthly, meets with a Supported Independent Living worker from Mental Health Services every Monday, attends the Early Psychosis Intervention Group every Tuesday, meets with Psychologist Nicole Bringsli biweekly, and receives additional support through Leslie Robert.

[45] In addition, it was clear that C.P. has a circle of dedicated personal supports. Leslie Robert presented as a strong advocate for C.P. and has clearly made herself available, even outside of regular working hours, to ensure that C.P. is supported in times of need. C.P.'s parents have also been supportive. Her father, SP, in particular, appears to have a strong relationship with C.P. and has attended meetings and access

visits, both on his own and with C.P. Finally, Tonie Sternbergh, a friend of C.P.'s mother, should be commended with respect to the level of commitment she has displayed with respect to her willingness to support C.P. She has attended numerous meetings and access visits with C.P., and was present throughout the many long days in court for the hearing of this application.

[46] With respect to meeting J.L.'s special needs, C.P. has been somewhat less successful. She seemed to have some difficulty articulating J.L.'s developmental needs and has struggled to implement the recommendations made by the Child Development Centre. This is not altogether surprising given some of C.P.'s limitations.

[47] The parenting assessment completed by Psychologist Dr. Lucardie raised questions about the degree to which C.P.'s mental health issues and her cognitive and intellectual functioning may impact on her ability to successfully develop the skills necessary to meet J.L.'s needs. I must say that I had some concerns with respect to Dr. Lucardie's report and evidence as a whole, particularly his list of recommendations which seemed to me to be excessive. There was something of a 'kitchen sink' approach to his recommendations, with no apparent attempt to focus or prioritize in such a way as to give C.P. clear expectations and attainable goals. However, in this area, his assessment is supported by the other evidence, including that of Family Support Worker Belinda Poyntz.

[48] C.P. has actively worked with Ms. Poyntz to implement the Child Development Centre recommendations at access visits; however, Ms. Poyntz noted that their work remained focussed on only the first three of 26 recommendations as C.P. had difficulty

remembering, and consistently implementing them at visits. She described three visits in which C.P. seemed to be more focussed on her own tasks and had difficulty recognizing and responding to J.L.'s cues. Nonetheless, she confirmed that she had seen many examples of J.L. enjoying visits with C.P. and noted that C.P. demonstrated an ongoing willingness to work with Child Development Centre and others to meet those needs.

Issues and Law:

[49] The application before me raises several important questions:

1. Is J.L. likely to be physically harmed by C.P. such that he is in need of protective intervention, as defined in s. 21(1)(a) of the *Child and Family Services Act*?
2. Is J.L. likely to be emotionally harmed by C.P. such that he is in need of protective intervention, as defined in s. 21(1)(c) of the *Child and Family Services Act*? and
3. If I determine that J.L. is in need of protective intervention due to a likelihood of either physical or emotional harm, is the appropriate response a continuing care order as sought by the Director or a supervision order as sought by C.P.?

[50] Counsel for the Director asserts that the standard of proof to be applied in considering these issues is that articulated by the B.C. Court of Appeal in *B.S*. v. *British Columbia (Director of Child, Family and Community Services)* (1998), 48 B.C.L.R. (3d) 106, as follows:

> 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 that 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…

[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.

1. Likelihood of Physical Harm:

[53] The Director alleges that the evidence supports a finding of either past or future physical and emotional harm.

[54] In his decision with respect to the application for a temporary custody order, Judge Cozens considered the issue of physical harm, but concluded that he was "…not

persuaded by the evidence that J. has suffered any physical harm as a result of the actions of Ms. P, nor that he is likely to be physically harmed by her." (para. 40).

[55] There is absolutely no reason to interfere with Judge Cozens' findings with respect to past physical harm.

[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'.

[57] The very nature of C.P.'s delusion is about protecting J.L. from perceived or imagined harm. Even in acting on that delusion in the past, she has not caused actual physical harm to J.L., and I am not satisfied, on the evidence before me, that if she were to act on the delusion in the future, there would be a risk of physical harm to J.L.

2. Likelihood of Emotional Harm:

[58] Section 21(3) defines emotional harm as "a pattern of behaviour that is detrimental to the child's emotional or psychological well-being."

[59] At the prior hearing, Judge Cozens concluded:

> 44 Now, the evidence does not establish that J. has suffered actual emotional harm from the actions of Ms. P. as required by the *Act*. The evidence before me is the detachment or withdrawal J. appeared to undergo at times when Ms. P. was upset and angry, and his resistance to certain of her actions, including attending in the bathroom with her. While I do not doubt that J. did detach himself and withdraw on the occasions testified to or did resist Ms. P.'s actions involving him at times, that does

> not establish that he has suffered actual emotional harm. I have no assessment or report before me to indicate that J. has suffered emotional harm.

[60] He did, however, go on to find that C.P. had demonstrated a pattern of conduct detrimental to J.L.'s emotional and psychological well-being, which ought not to be allowed to continue.

[61] The evidence before me clearly establishes that C.P. persisted in the very same pattern of behaviour up to and including the June 22, 2011 incident.

[62] Furthermore, I am satisfied that the evidence goes further in establishing that J.L. suffered actual emotional harm as a result, in particular, of C.P.'s actions on June 22. I base this finding on the following evidence:

- On June 24, 2011, the foster parent reported that, since the June 22 incident, J.L. had wet his pants on June 23, was experiencing difficulty sleeping, and had told another child he was "scared with mommy";
- On June 27, 2011, the daycare reported that immediately following the June 22 incident, J.L. kept repeating "mommy's going to shoot them" and "mommy's going to follow Chris and shoot him". When he observed other children mimicking the use of guns, he yelled "shooting is bad. Don't shoot him. My mommy is bad" and then started to cry. He was noted to be okay after about ten minutes but would not discuss the incident;
- On June 28, 2011, the foster parent reported that while driving past the Canada Games Centre and observing the flashing lights of the fire trucks responding to the recent fire, J.L. commented "someone shoot the pool"; and
- On June 29, 2011, J.L. asked whether Chris was okay and whether his mother was sick.

[63] In addition to these observations, Leona Corniere, a registered psychologist with the Child Development Centre, conducted five play sessions with J.L. following the June

22 incident. While conceding that children do not necessarily develop in a linear fashion, she nonetheless observed marked regression in J.L.'s behaviour in the play sessions. Specifically, he regressed in his play skills and returned to relational play normal for children between 9 and 24 months, he was less focussed in his play and he required increased adult guidance to follow routine.

[64] C.P. does not see her actions as being actually or even potentially harmful to J.L., but insists that any regression observed is a result of J.L. being separated from her.

[65] However, when one considers J.L.'s preoccupation with shooting along with his regressive behaviours in the days following the June 22 incident, there is an obvious link, in my view, between his behaviour and the incident. Accordingly, I am satisfied, on a balance of probabilities, that J.L. suffered actual emotional harm as a result of the actions of C.P. on June 22, 2011.

[66] With respect to the risk of future harm, it must be noted that the last incident of inappropriate behaviour placed before me was the June 22 incident, which was followed by a period of hospitalization. C.P. was determined to be sufficiently stable to allow for visits to resume in October of 2011. The evidence appears to suggest that there has been an improvement in C.P.'s mental health since the introduction of Clopixol by injection, and that she is now experiencing a period of relative stability. However, the evidence does not satisfy me that the primary delusion has disappeared.

[67] Dr. Heredia indicated that, while he had observed a calming of symptoms at the November 1 visit, it was difficult to say whether the medication had cured her delusion. He noted the importance of seeing a good period of stability in the range of 6 months before he would recommend graduated supervised visits, let alone a return of J.L. to C.P.'s care.

[68] C.P. has experienced periods of stability in the past. The question raised by both Dr. Heredia and Dr. Lucardie is the likelihood of a sustained period of stability, particularly in the face of environmental stressors such as are inevitably encountered when dealing with children, as environmental stressors have triggered rapid decompensation of C.P.'s mental state in the past.

[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'.

[70] In the result, I am satisfied that J.L. has suffered actual emotional harm as a result of C.P.'s actions and remains at risk of future emotional harm such that I find him to be a child in need of protective intervention.

3. Supervision Order versus Continuing Care Order:

[71] Having made the finding that J.L. is in need of protective intervention, I must now determine the order which will most appropriately address the child protection issues in this case. Section 57(3) of the *Child and Family Services Act* sets out the options in terms of available orders. It should be noted that, by operation of s. 61, the temporary

custody orders referred to in s. 57(3)(b) and (c) are not available to me. The only available options are a return to C.P. pursuant to a supervision order under s. 57(3)(a) or an order placing J.L. in the continuing custody of the director pursuant to s. 57(3)(d).

[72] In determining the most appropriate order, I must also have regard to which order best meets J.L.'s needs. The evidence clearly established J.L. to be a happy, energetic child. However, he is also a child with special needs. Dr. Greuger, a pediatrician with Child Development Centre, has diagnosed J.L. as having global developmental delays, a possible language disability, and ADHD. Ms. Corniere has indicated that J.L. has difficulty in the areas of attention control, activity level, problem-solving, social skills, and a moderate language disorder. Both agree that J.L. requires close supervision to ensure his safety, a stable home environment with clear structure, direction and expectations, ongoing therapy and caregivers who understand his needs.

- **Supervision Order:**

[73] Counsel for C.P. proposes a return to C.P. on a one-year supervision order that would include the presence of a responsible adult residing with C.P. as a support person with a proposed transition schedule providing for a gradual return of J.L. to C.P.'s full time care over a period of six months.

[74] Dr. Lucardie raised questions about the viability of the proposal, suggesting that for such an arrangement to work, the proposed support person would, in addition to having a full understanding of C.P.'s stressors and how to effectively address them, require specialized training or qualifications in a number of areas including mental

health, parenting, developmental delays, child abuse, and identifying and addressing violence.

[75] While I found Dr. Lucardie to be somewhat extreme in his expectations with respect to training and qualifications, I do share some of his concerns about the proposal. In my view, the presence of a support person, absent a clearer articulation of that person's role and responsibilities, would be insufficient to ensure C.P. appropriately manages her behaviour, and to address both J.L.'s needs and the child protection concerns raised in this case.

[76] The proposal, as I understand it, would place C.P. in the role of primary caregiver and, as the proposal does not clearly articulate the role of the support person in any meaningful way, I am left with the concern that that person might see their role primarily as an observer, expected to intervene only should serious problems arise. One must recognize, however, that beyond the numerous incidents where C.P.'s behaviour has been inappropriate, she also clearly struggles in her efforts to develop and to implement the parenting skills and strategies necessary to meet J.L.'s special needs.

[77] For such a plan to be workable, a much greater role would be required of the support person, in my view; something more akin to a co-parenting arrangement where the person would take a much more active role in raising J.L. and assisting C.P. in her ongoing efforts to develop the necessary parenting skills.

[78] However, even with a co-parenting arrangement, the skills and abilities of the proposed co-parent would be crucial in determining whether the arrangement could address the child protection concerns and meet J.L.'s needs.

[79] C.P. has proposed two individuals prepared to offer live-in assistance to her in caring for J.L. Tonie Sternbergh has been put forward as the primary option with S.P., C.P.'s father, proposed as an alternate should I determine that Ms. Sternbergh is not suitable.

[80] The evidence relating to Ms. Sternbergh as a potential co-parent is problematic. There is no doubt she has displayed a significant commitment to C.P., or that C.P. has benefited greatly from the support provided. In addition, letters have been filed which speak to Ms. Sternbergh's character in other areas of her life. However, the role I would envision for any co-parent in this situation would require that the person take a lead role in guiding and mentoring C.P. with respect to managing her own behaviour and her parenting of J.L. There are two issues which would make Ms. Sternbergh unsuitable to take on this role: her attitudes with respect to physical discipline of children and her attitudes towards medication for mental health issues.

[81] Ms. Sternbergh is the mother of 9 children. I heard evidence from both her and her daughter, Sarah Sternbergh. Their recollections differ with respect to the exact nature of the discipline meted out by Ms. Sternbergh, but even on Ms. Sternbergh's own evidence it was clear that she routinely spanked her children as a means of correction. She asserts that it was not her intention to hurt them, but rather to make them listen. She indicated she would use a switch to spank the children 3 to 4 times. If they carried

on excessively or were overly dramatic, she would use the switch one more time to a maximum of 6 blows.

[82] She admits to having left marks on two of the children: Caleb and Noah. With respect to Caleb, she indicates she was not aware of the marks at the time and only learned of them later. With respect to Noah, she indicates that she used the switch on her but inadvertently struck her above the panties leaving a mark. She says she stopped using the switch at that point, as her intention was not to hurt the children. Instead, she began using a leather strap that was 1 ½ inches wide and a foot long.

[83] Ms. Sternbergh also recounted an incident where she was caring for a niece who was crying inconsolably. She spanked her to quiet her, only to learn the next day that the child was ill. She says she apologized to the child's mother though not to the child, as one cannot apologize to an infant.

[84] It would appear that Ms. Sternbergh's attitudes with respect to physical discipline have, over the years, changed only to the extent that she now believes that one should not spank a child unless one is a parent or close relative. She asserts that she would never spank J.L. However, if she were placed in a position of providing parenting guidance to C.P., I would have concerns about her views influencing decisions made by C.P. with respect to appropriate discipline.

[85] What is clear to me is that J.L. is a child with special needs whose hyperactivity would present a challenge to any parent. There is a significant amount of information before me in relation to J.L.'s needs and challenges along with the approaches that

have been proven successful in addressing those needs and challenges. There is nothing in the evidence to suggest to me that physical discipline would be in any way effective or appropriate in managing J.L.'s behaviour.

[86] With respect to medication, the evidence indicates that Ms Sternbergh suffered a psychotic break following the birth of her last child. Following an incident where she jumped out of a moving vehicle because of a dispute with her husband and children over the fact her husband had installed a CD player in the vehicle rather than the tape player she had requested, Ms. Sternbergh was hospitalized for three months. She indicates that medication was recommended but that she refused.

[87] She believes that taking medication is the equivalent of drinking alcohol as it masks the issues instead of addressing them. She believes that mental health issues are better addressed without medication.

[88] She indicates that the taking of medication is a personal choice and she would not attempt to influence C.P. in this regard, but concedes that her views with respect to medication may affect how C.P. views medication.

[89] I conclude that a supervision order structured around Ms. Sternbergh assuming a co-parenting role would not adequately address the child protection concerns or J.L.'s special needs, as it would not provide C.P. with appropriate guidance with respect to managing her own mental health and effectively parenting J.L.

[90] With respect to S.P. as an alternative option, I note that the Director adduced evidence with respect to historical child protection concerns. However, it appeared that

the majority of the concerns related more specifically to A.J., C.P.'s mother. They did not cause me undue concern.

[91] I agree with J.L.'s counsel that S.P. appears to be a much more viable option for consideration in a co-parenting role. However, the evidence falls short of satisfying me that a supervision order with S.P. as a co-parent would be appropriate at this time. I reach this conclusion for two reasons.

[92] Firstly, there was a great deal of uncertainty as to when S.P. would even be in a position to assume such a role. He currently resides in Haines Junction with his parents, one of whom suffers from Alzheimer's and the other dementia. He has been making efforts to move them into an extended care facility, but to date has been unsuccessful. He spoke of intending to 'force the issue', and hoped to have matters resolved in the near future, but there are certainly no guarantees as to when and if he will be successful. Until such time as the issue of his parents' living arrangement is resolved, S.P. is not in a position to move in with C.P. to assume a co-parenting role.

[93] Secondly, as the option of S.P. was raised late in the day, there has been no opportunity for the option to be explored in any great detail, nor has there been any opportunity for an independent assessment of the proposal to ensure that it is an arrangement that can adequately meet J.L.'s needs.

[94] While I may well have considered the option of a temporary custody order to allow this option at least to be explored more fully and assessed independently, a

temporary custody order is simply not available to me due to the amount of time J.L. has already spent in care.

[95] As the evidence has failed to satisfy me that a supervision order can appropriately address the child protection concerns and ensure that J.L.'s needs are met, I would decline to make such an order.

Conclusion:

[96] I conclude that the only option that can address the child protection concerns in this case and ensure that J.L.'s needs are met, in the circumstances as they now stand, is a continuing custody order. I hereby place J.L. in the continuing care of the Director pursuant to s. 57(3)(d).

[97] I understand that it is the Director's intention to explore placement with an extended family member. It is my hope that C.P. and her family will actively participate in that process with a view to ensuring the best possible placement for J.L. and to allow, as and where appropriate, for C.P. to continue to play a role in J.L.'s life.

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RUDDY T.C.J.