

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

A. (S.L.), Re

In the Matter of The Child, Youth and Family Enhancement Act, R.S.A. (2000) Chap. C-12

And in the Matter of S.L.A. born 1991

Alberta Provincial Court

Lipton Prov. J.

Heard: April 3, 2000 - October 6, 2004

Judgment: July 20, 2005

Docket: Calgary 91303933W101001

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Counsel: Ms T. Mair for CYFEA Director

Ms D. **Castle** for Maternal Grandparents

Mr. H. Van Harten, Ms B. Border for Mother

Mr. J. Markey for Child

Subject: Family

Family law --- Children in need of protection — General principles — Jurisdiction of courts — Age of child — General principles

Child was sexually abused by grandfather — Permanent Guardianship Order put in place regarding child — Access granted to child's mother, father and grandmother and denied to grandfather — Director of child welfare felt that access by mother was counterproductive to child's well being and caused improper behaviour — Child expressed desire that she did not wish to see family — Child was seven years old at time of access order and 14 at time of proceedings at bar — Grandfather brought application for access — Mother and grandmother brought separate applications for joint custody with director — Applications dismissed — Child was over 12 years old and did not consent to access or joint guardianship, as required by s. 36(3)(c) and s. 34(9) of Child Welfare Act — Fact that proceedings were review of order and not initial order was irrelevant.

Family law --- Children in need of protection — Status review hearing — Access by parents

Child was sexually abused by grandfather — Permanent Guardianship Order put in place regarding child — Ac-

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

cess granted to child's mother father and grandmother and denied to grandfather — Director of child welfare felt that access by mother was counterproductive to child's well being and caused improper behaviour — Child expressed desire that she did not wish to see family — Child was seven years old at time of access order and 14 at time of proceedings at bar — Grandfather brought application for access — Mother and grandmother brought separate applications for joint custody with director — Applications dismissed — Child was over 12 years old and did not consent to access or joint guardianship, as required by s. 36(3)(c) and s. 34(9) of Child Welfare Act — Fact that proceedings were review of order and not initial order was irrelevant.

Cases considered by *Lipton Prov. J.*:

A. (S.L.R.), Re (1998), 1998 ABPC 110 (Alta. Prov. Ct.) — followed

Alberta (Director of Child Welfare) v. K. (L.) (2005), 2005 ABPC 73, 2005 CarswellAlta 488 (Alta. Prov. Ct.) — followed

Alberta (Director of Child Welfare) v. R. (M.) (2003), 2005 ABQB 641, 2003 CarswellAlta 2020 (Alta. Q.B.) — followed

B. (K.L.) v. British Columbia (2003), 18 B.C.L.R. (4th) 1, 19 C.C.L.T. (3d) 66, 230 D.L.R. (4th) 513, [2003] 11 W.W.R. 203, 309 N.R. 306, [2003] 2 S.C.R. 403, [2003] R.R.A. 1065, 44 R.F.L. (5th) 245, 187 B.C.A.C. 42, 307 W.A.C. 42, 38 C.P.C. (5th) 199, 2003 SCC 51, 2003 CarswellBC 2405, 2003 CarswellBC 2406, 2004 C.L.L.C. 210-014 (S.C.C.) — distinguished

Starko v. Starko (1990), (sub nom. S. (D.G.) v. S. (S.L.)) 74 Alta. L.R. (2d) 168, 1990 CarswellAlta 83, 106 A.R. 62 (Alta. Q.B.) — referred to

T. (B.L.) v. T. (R.J.) (2003), 2003 ABQB 89, 2003 CarswellAlta 129 (Alta. Q.B.) — not followed

Statutes considered:

Child Welfare Act, S.A. 1984, c. C-8.1

Generally — referred to

Pt. 3 — referred to

s. 2 — referred to

s. 2(d) — considered

s. 27 — referred to

s. 34(8) — referred to

s. 34(9) — considered

s. 34(13) — referred to

s. 34(14) — referred to

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

s. 35 — referred to

s. 35(1) — considered

s. 36 — referred to

s. 36(1) — referred to

s. 36(3) — referred to

s. 36(3)(c) — referred to

s. 36(3)(e) — referred to

s. 36(5) — referred to

s. 36(5)(a) — referred to

s. 36(5)(b) — referred to

s. 37 — referred to

Child Welfare Amendment Act, 2003, S.A. 2003, c. 16

Generally — referred to

s. 116 — considered

s. 116(1) — referred to

Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12

Generally — referred to

s. 2(d) — referred to

s. 27 — referred to

s. 35(1) — considered

Interpretation Act, R.S.A. 2000, c. I-8

s. 35 — referred to

APPLICATIONS by grandfather for access and by mother and grandmother for joint custody of child subject to Permanent Custody Order.

Lipton Prov. J.:

Introduction

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

1 This hearing deals with the issue of access to the child SLA. (hereinafter referred to as either "SA" or the "Child") subsequent to my having granted a permanent guardianship order on December 9, 1998 (hereinafter referred to as "PGO"). My Reasons for Judgment with respect to the issuance of the PGO are reported at [1998 ABPC 110](#) (Alta. Prov. Ct.) (hereinafter referred to as the "PGO Decision").

2 In the PGO Decision, paragraphs 241 and 242, I granted access to SA's mother JA (hereinafter referred to as either "JA" or the "Mother") and to SA's maternal grandmother PA (hereinafter referred to as either "PA" or the "Maternal Grandmother"). In paragraph 243 of the PGO Decision, I denied access to SA's maternal grandfather BA (hereinafter referred to as either "BA" or the "Maternal Grandfather")(PA and BA together referred to as the "Maternal Grandparents"). Access was also granted to SA's biological father DC (hereinafter referred to as "DC").

3 The post-PGO access dispute was commenced pursuant to *The Child Welfare Act*, S.A. 1984, C-8.1 (hereinafter referred to as the "CWA") on September 8, 1999. The child welfare worker then assigned to SA's case filed an application for review of post-PGO access by both JA and PA due to ongoing difficulties with them concerning access to SA. Trial dates were set for April of 2000.

4 Prior to the start of this hearing in April of 2000, BA filed an application for access to his granddaughter SA. In September of 2000, Ms Castle requested that counsel be appointed for the Child and such application was granted. Also in September of 2000, Ms Castle advised that her clients were filing an application for joint guardianship under the CWA and such application was later filed on November 14, 2000 during this protracted hearing. The Mother also filed her own application for joint guardianship on April 30, 2002. All applications were consolidated into one hearing.

5 This hearing actually concluded on October 6, 2004. There were a number of interim motion hearings. There were also a number of adjournments which resulted in this matter being delayed. On November 1, 2004, the CWA was renamed the *Child, Youth and Family Enhancement Act*, R.S.A. (2000) Chap. C-12 (hereinafter referred to as the "CYFEA") and it was also amended, both by virtue of the *Child Welfare Amendment Act, 2003* (hereinafter referred to as the "CWAA") which was proclaimed in force as to most of its sections on November 1, 2004.

6 It is important to note that the CYFEA is not a new piece of legislation. Rather, it is legislation resulting from the amendments made to the CWA pursuant to the CWAA.

7 SA, who was seven years of age at the time of the PGO Decision, is now fourteen years of age.

8 There was some discussion during this hearing about the termination of access because of a potential adoptive placement for SA. I will not cover this discussion herein because the parties later acknowledged that once SA had turned age twelve, she would have to consent to any adoptive placement. My decision therefore will not factor in the possibility of adoption as something I need to consider with respect to the issue of access.

9 Counsel for a director (hereinafter referred to as the "Director") so designated pursuant to the CYFEA advised in her opening statement that it was the wish of the Director that all access to JA and PA be either terminated or that access be changed so that it would be at the discretion of the Director. Furthermore, the Director opposed any access between BA and his granddaughter SA. The basis for the review of access by the Director was that SA was in need of stability, consistency, and a life free of conflict, all of which would not occur as long as access was occurring with either or both of JA and PA, or if access was granted to BA.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

10 Counsel for the Maternal Grandparents advised in her opening statement that the Director had not followed the PGO Decision with respect to access and that since July of 1999, no access had been granted to either JA or PA until my interim Order in February of 2000. Furthermore, access by JA and PA with SA that had occurred after the granting of the PGO and prior to July of 1999 had been positive even though the Director had scaled back visits and at one time, had briefly suspended them entirely during this time period. Counsel suggested that any acting out by SA was not due to the Maternal Grandparents' behaviour but was attributable to other factors. One of the factors put forth by counsel was the negative behaviour of SA's initial foster parent towards the Maternal Grandparents. This foster parent, MD, is the paternal grandmother of SA (hereinafter referred to as either "MD" or the "Paternal Grandmother").

Evidence Presented by the Director

SD

11 The Director's first witness was SD, a caseworker, who assumed conduct of the file from RR, another caseworker. (I note here that caseworkers were formerly referred to as child welfare workers under the CWA). RR had received the file after the PGO had been issued but shortly thereafter transferred it to SD in August of 1999. SD was the assigned caseworker until early February of 2000. She testified on April 3, 2000.

12 SD testified she met with JA and the Maternal Grandparents in August of 1999 to discuss access. She admitted in cross-examination that the purpose of the meeting was to tell them that access to SA was being terminated because visits were not going well, and that their angry reaction was likely due to the fact they were expecting to discuss access as opposed to being told that access was being terminated. SD said that she was directed by her supervisors to tell the Maternal Grandparents and JA that access would be terminated despite the fact that she had not yet had an opportunity to read SA's file.

13 The basis for terminating access visits was as follows. With respect to PA, SD said she had received information via the visit supervisor at that time, MN, that PA had been seen whispering to SA and on one occasion had overheard PA asking SA where the latter lived. With respect to JA, SD testified she received information that JA had threatened MN on one occasion if MN attempted to terminate the visit early, and that JA was giving gifts to her daughter SA and then taking them back until SA returned home. MN also reported to her that at a visit, JA told SA that if she did not return home, SA would not be a sister to JA's new baby. SD also said she had received information from MD that after access visits, SA would sometimes revert to infantile behaviour and would have tantrums in school. SD further testified that SA's therapist, EC, did not want SA to have any access because the visits were very hard on her.

14 At this August 1999 meeting, SD testified that the Maternal Grandparents did not appear to understand the significance of the PGO as it was their belief that despite the PGO, SA would be returned home. SD said that she told the Maternal Grandparents and JA at this point in time to hire a lawyer.

15 SD said that SA resided with MD until the end of January of 2000 when SA was moved into the care of G a new foster mother. While in MD's care, SD testified that SA had done so well that it was contemplated at one point in time that MD would be granted joint guardianship of her granddaughter together with the Director. The move to G was necessitated because MD lost a government benefit while being investigated for fraud, and admitted that it was becoming more difficult for her to look after SA and help SA with her physical exercise routine without the assistance of MD's roommate. SD said that the fraud allegation did not cause her to reevaluate SA's placement with MD.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

16 In September of 1999, SD said that she met with SA. SA told SD that she was pleased that access had been terminated because she was mad at both JA and PA and that JA was angry at visits. In January of 2000, SD said that she again met with SA regarding visits. SA confirmed that she didn't want to see either her Mother or Maternal Grandmother and stated that "...I hate my mother and ... I don't want to see her." (page 22, lines 26 and 27, April 3 & 4, 2000 transcript)

17 During cross-examination, SD stated that she was not aware nor had she ever been advised of the allegation that MD despised the Maternal Grandparents and JA, and that MD had been passing this information on to SA thus causing SA to suffer from anxiety and act out. SD also admitted that SA would sometimes have tantrums after seeing her biological father DC who had regular supervised weekly visits with his daughter.

18 Noteworthy is an admission by SD that she had not read a visit report generated by MN in April of 1999 in which it was reported that SA told MN that MD had been hitting her on the head with her hand. I note here again that SA was not moved from MD's home until the end of January of 2000. Evidently, the only visit reports read in detail by SD were those prepared by MN which supported the decision to terminate access to SA.

19 Also noteworthy is the fact that despite an interim access Order that I issued in January of 2000 for access by PA to SA, such Order was ignored by the caseworker on the advice of EC, SA's therapist. Evidently, EC told the caseworker that because SA had been recently moved to G's home from MD's home, no access should occur until EC felt SA was ready. EC was aware of my Order.

20 SD stated that after access was terminated in August of 1999, SA's school reported in September of 1999 that her behaviour gradually improved. SA's behaviour began to deteriorate again in April of 2000 after JA and PA had seen SA on Court ordered visits.

21 SD denied that it was irresponsible on her part to discuss Court proceedings with SA. In particular, she denied that her visit with SA just prior to the January 2000 Court proceedings was for the purpose of getting SA to reinforce her September 1999 decision to not want access with JA or PA. SD admitted, however, that had SA expressed a preference for seeing them at that time, she would have spoken to EC and perhaps changed their position on the matter.

EC

22 EC was the Director's second witness. She was qualified as an expert in clinical social work and was the therapist for SA.

23 EC first testified on April 4, 2000. At that time, EC gave the following evidence.

24 EC said that she received a referral in February of 1998 from the caseworker at that time to engage in therapy with SA because of the latter's acting out behaviours.

25 In May of 1999, EC said that she wrote a letter to RR, the caseworker assigned to SA's file at that time. EC said that she recommended that all access visits with JA and PA be cancelled based on her work with SA. In her opinion, SA's defiant behaviour was clearly attributable to her access visits, even when some of the visits went well, and that such behaviour was SA's way of communicating that she did not want these visits to continue to occur. Furthermore, when visits were temporarily suspended, SA's behaviour improved. When visits resumed, SA's behaviour again began to deteriorate.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

26 One of the reasons identified by EC as the basis for SA's defiance was "...she didn't have to listen to the teachers because JA told her she didn't have to listen to anyone." (page 185, lines 18 and 19, April 3 & 4, 2000 transcript)

27 EC also reported that she was advised by MD that the latter was having difficulty in getting SA to go on access visits with JA and PA.

28 EC testified that when RR would not terminate access visits, she referred SA to RG. RG was the Children's Advocate.

29 EC said that SA told her that she was opposed to visits because she didn't like being questioned and at times felt threatened. Furthermore, SA objected to being told that she could have certain of her possessions only if she obeyed her mother JA.

30 EC stated that SA expressed an interest in seeing both JA and PA, subject to certain provisos. For example, SA did not mind seeing JA if she saw JA acting in a positive manner with SA's step sister and JA behaved herself. SA did not mind seeing PA as long as the latter did not discuss SA's uncle NA. EC said that SA did not want a visit with BA. SA wanted visits supervised and in a public place. At these visits, SA did not want either JA or PA causing her distress.

31 Based upon EC's recommendation in April of 2000, continued access visits were ordered.

32 EC next testified on September 27, 2000. At that time, she gave the following evidence.

33 EC stated that there were significant changes in SA's behaviour depending upon whether or not access was occurring and if occurring, whether or not the access visit had been positive. When an access visit had occurred which was not positive, EC testified that SA acted out, was angry, was aggressive towards other children, was defiant in school, was confused, was distressed, and was irritable in her foster placement.

34 EC gave an example of a bad access visit that occurred. JA and PA went with SA and MC, the caseworker, to a swimming pool. EC said SA was visibly shaken at the therapy session discussing this visit because SA thought a physical altercation would occur between JA and MC. EC said that SA told her she thought JA was capable of killing MC.

35 EC gave another example of a bad access visit. At this visit, PA told SA she was going to return home and live with JA. EC said this caused SA significant distress. With respect to the incident at the swimming pool, SA told EC that she was also upset that PA did not try and help MC when MC was in danger from JA.

36 At yet another visit, EC said that it was reported to her that JA was overheard by MC telling SA that if she did not return home, then she could not have a relationship with her step-sister, JA's second child from another relationship.

37 When access visits occurred which were positive, EC said that SA was comfortable and happy.

38 EC said that SA told her at a session that she wanted supervised visits but only if she felt safe, and was not badgered or questioned by either JA or PA. EC said that SA had a fear that she would be taken away if JA or PA found out where she lived.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

39 When asked if SA wanted visits again with her Mother, EC said "When I asked SA about visits, SA did not want to have visits, and then she said, "But I'd like to see mom at least once, to get a bow and arrow," which mom had promised her. Apart from that, she didn't think she wanted to have any visits with her mom again, until she was big enough to really protect herself. Somewhere around 14 or 15, she thought, would be okay." (page 38, lines 23 to 27, and page 39, lines 1 to 3, September 27, 2000 transcript)

40 With respect to seeing PA, EC said "She feels that her grandmother is going to put as much distress on her as her mom, in terms of, she says, "All grandma would do then, is badger me to see mom." So, to her, one is tied with the other, and is equally distressing." (page 41, lines 3 to 7, September 27, 2000 transcript)

41 EC concluded her evidence in September of 2000 by stating that she did not recommend that any further access occur between SA and PA or JA. While acknowledging that observing a visit between SA and JA or PA would be beneficial, EC said that SA had become more withdrawn since visits had resumed. SA had become very firm in her belief that no access should occur. Furthermore, asking SA's permission before any access visit would not alleviate SA's anxiety.

42 EC said that the safety of SA had to be the first concern. The PGO was granted to provide SA with a safer environment where she could develop normally.

43 EC said that SA was not feeling pressured about the issue of access to the Maternal Grandparents and JA nor was she saying things in order to please EC. Therefore, EC advised that it would be of benefit to this hearing if I were to speak to SA myself as to what her wishes were in this matter.

44 As a result of the evidence heard in September, no further access occurred between SA and either of JA or PA. The last access visit occurred on July 28, 2000.

45 EC testified again on December 19, 2000. Her evidence at that time was as follows.

46 EC said that since the cancellation of access, SA had continued to stabilize and relax. She was doing better in school and in her foster placement.

47 EC also said that SA still harboured anger towards JA.

48 In EC's opinion, SA would request a visit when she felt emotionally strong enough. SA had told her in a therapy session that she might want a visit in February of 2001. Based on her evidence, I ordered at that time that access to SA by JA or PA occur only if initiated by SA.

49 EC was back in Court on July 17, 2001. Her evidence at that time was as follows.

50 EC related one incident that had occurred in 1999 at an access visit when JA had tried to bribe SA with a jewellery box if the latter told JA where she was living.

51 At a July 2001 therapy session with SA, EC said that SA would no longer discuss the issue of access to JA or PA in therapy because she had already made up her mind. When asked what life would be like with no access to her family, EC said "...she commented that she would be happy and she'd have a good life and she was smiling when she said that... I've had the impression from SA that she's ready to move on for a long time now and she is very much feeling like this whole process is keeping her life in limbo... She definitely wants closure..." (page 13, lines 11 to 23, Volume I, July 17, 2001 transcript)

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

52 EC again confirmed that the possibility of having an access visit was causing SA distress. In particular, SA was worried over whether her Maternal Grandparents or JA found out where she lived. Despite this, EC said that SA had made significant improvements in school and in her behaviour.

53 As a result, EC confirmed her September 2000 recommendation that neither the Maternal Grandparents nor JA have any access to SA. EC said that any Court ordered access would cause SA to act out again and would be "retraumatizing" her.

54 During cross-examination, EC was challenged by counsel for the Maternal Grandparents concerning her conclusion that access by JA and PA was the reason behind SA's defiant behaviour. EC acknowledged that during the January to April 1999 time period when access had been suspended, SA was still acting out. During this time period, EC acknowledged that SA had changed schools, had left the Paternal Grandmother's home for another foster home, had missed some access visits with her biological father DC, and had not been invited to DC's wedding.

55 On May 4, 1999, EC had written a letter to RR, the caseworker at that time, recommending that all access by JA and PA to SA cease. Counsel for the Maternal Grandparents also challenged EC's conclusion on the basis that EC's therapy notes did not support her conclusion to recommend a cessation of access at that time.

56 EC stated that she had never taken the position that SA's acting out behaviours had been as a direct result of her access visits with either JA or PA. Rather, the intensity and extent of SA's acting out behaviours had been negatively influenced by these access visits. EC said that when there was no access or when an access visit went well, SA was more relaxed and her acting out behaviours were lessened. When access visits went poorly, EC said that SA's acting out behaviours were severe and could be related to the visits.

57 EC stated that SA was often terrified what might happen on an access visit, even when visits went well. EC did acknowledge, however, that she had never used the word "terrified" in her January to April 2001 notes to describe SA's feelings.

58 Furthermore, EC stated that SA's diagnosis of ADHD (that had been made in April or May of 2000) did not account for her acting out behaviours. EC said that the medication prescribed for SA helped her with impulsive behaviour and concentration.

59 While acknowledging that there could be other factors that caused SA to react in a negative manner, EC stated that her decision to recommend a termination of access was for the purpose of eliminating one stressor in SA's life.

60 EC did not dispute the suggestion that SA loved her Mother. EC also stated that SA was happy to see her Mother at some access visits, at times looked forward to access visits, and acknowledged that some of the access visits had gone well. This was why she had recommended a resumption of access visits in April of 2000, but then asked for them to be terminated in September of 2000 after the incident at the swimming pool.

61 EC said, however, that SA's initial anger about not being able to live with her Mother had been replaced by anger about her Mother's behaviour at access visits. These bad visits were causing SA distress which interfered with her attempts to stabilize SA.

62 EC testified again on July 18, 2001. Her evidence was as follows.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

63 EC acknowledged during cross-examination that SA acted out at times because she missed her Mother.

64 In looking at her therapy notes from August of 1999 to March of 2000, EC acknowledged that SA continued to act out even though no access had occurred during this time period. EC said, however, that there were degrees of acting out by SA, and that she had made this comment in her September 2000 testimony.

65 EC vehemently denied that she wrote a letter in August of 2000 recommending termination of access based on instructions from MC, the assigned caseworker. She denied that her opinion on SA was manipulated by MC despite the assertion in cross examination that her therapy notes did not support her recommendations on terminating access.

66 I note here that because of the then apparent discrepancy between some of EC's notes and her recommendations, and because the Maternal Grandparents had filed an application for joint guardianship, I instructed MC to do a bilateral assessment on the Maternal Grandparents and JA. I too needed clarification on why SA continued to show fear well into 2000; that is, what was the basis for that fear and was SA being given the power to manipulate the situation and was she alienating her family at the behest of MC or EC. Dr. PS was eventually retained for this bilateral assessment but as noted later in this judgment, these assessments were never done.

67 EC made her last appearances in Court on February 27 and 28, 2002.

68 EC acknowledged that SA had been acting out in 1999 and 2000 months after access had been suspended. EC said that SA misses her family. With respect to SA acting out in school starting in September of 1999 even when there was no access occurring, EC said that SA was dealing with her feelings and abandonment issues. EC said that when children feel abandoned, they can often engage in regressive behaviour and acting out behaviours.

69 In this regard, EC agreed with Dr. LM's conclusions that SA has serious emotional difficulties as well as negative and turbulent feelings about her Mother.

70 EC said that it is normal for a child to want to see her mother yet be mad at her at the same time. EC acknowledged that at times, SA was being manipulative.

71 EC agreed with the statement that SA vacillated about seeing her Mother and said this is normal for a child in SA's position. EC also agreed that at times, SA would refuse to see her Mother in order to punish her because she was angry. However, EC said that "For the most part, SA has always wanted to see her mom and I don't think I have ever testified that SA consistently did not want to see her mom. She'd go through periods where she didn't want to because she was very stressed by some of the interactions that were happening on the visits. When the visits were going well, SA was ecstatic. SA was very happy and she wanted to continue seeing her mom. When the visits were causing her distress — those were the times when she would come out and say she did not want to see her mom. She also went through that period where she was not having any access. Where she started-where for the first time, she started to talk about some of the things that had happened with her and mom." (page 778, lines 3 to 19, Volume III, February 27, 2002 transcript)

72 EC said that the need of a child to see a parent doesn't go away, even when the relationship has not been healthy.

73 EC said that one way to view SA's behaviour is to think of her need to maintain an equilibrium between

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

having stability in her life and having access to her Mother. If the visits are perfect, the equilibrium is maintained. If, however, the visits are conflictual in nature, SA would vacillate on her desire to see her Mother. Given SA's psychological issues which would appear to be ongoing, her cerebral palsy, and possible self-esteem issues, it was not surprising to see SA change her mind on access visits and act out even when visits weren't occurring.

74 In EC's opinion, when the equilibrium cannot be maintained after the granting of a PGO, then the best interests of SA lay in not having access. EC said that it made no sense whatsoever to issue a PGO and still expose SA to turmoil. As SA's guardian, the Director had an obligation to stop the ongoing conflict.

75 EC acknowledged that she had assumed the Director had done everything they could to facilitate access between SA and JA.

76 EC said that you cannot compare custody/access cases to PGO cases. In the latter, the PGO speaks as to the instability of the child's former home and any access granted by the Court must keep this in mind. While ongoing contact would be desirable, if conflict free, SA above all needed to move on with her life in as turmoil free an environment as possible.

77 Regarding SA's comments about having been spanked by her Mother, EC acknowledged that she first saw SA in February of 1998 and that SA did not bring up this matter until an October 1999 session. EC also acknowledged that SA had earlier denied having been spanked by her Mother.

78 I note again for the record of some inconsistencies in EC's notes. For example, there was a reference in EC's notes to SA telling her that her Mother was pregnant months before JA told anyone. There was also a problem with respect to one memo being dated the wrong year after it had been rewritten to delete some information not relevant to SA's case.

SA

79 I spoke with SA the afternoon of September 27, 2000 in open Court, on the record, but in-camera without anyone else being present other than my clerk and the person who transported SA to Court. The point of this interview, following EC's evidence earlier that morning, was to determine SA's wishes with respect to ongoing access to JA and PA.

80 At this interview, SA advised me that she wanted to see her Mother every two months and on special occasions such as her birthday and Christmas as long as her Mother was not threatening. SA confirmed EC's evidence regarding the incident at the swimming pool in July of 2000.

81 SA told me that her Mother promised her a dog if she returned home.

82 SA also told me that she wanted to see the Maternal Grandmother at the same time as she saw her Mother. Her rationale for this was that her Maternal Grandmother had "threatened" the visit driver with jail on one visit.

83 SA told me that the Maternal Grandmother told her on an access visit to return home to JA.

84 SA's overall concern with access visits was what she perceived to be threatening behaviour by both her Mother and Maternal Grandmother. Furthermore, SA told me that it would not bother her if visits were stopped due to what she perceived as their misbehaviour on visits. When pressed on this matter, SA told me that she

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

would like to leave the issue of access up to MC "Because then I would get a choice, instead of having to go on a regular basis." (page 16, lines 4 & 5, September 27, 2000 transcript)

85 SA also confirmed that she liked MC, the assigned caseworker.

MC

86 MC is the caseworker who took over SA's file in April of 2000. She was the Director's representative throughout this hearing. She first testified on July 17, 2001.

87 MC said that SA had been diagnosed with Attention Deficit Disorder (hereafter referred to as "ADD.") in April or May of 2000 and was prescribed dexedrine to deal with inattentiveness at school.

88 MC said that she had spoken to SA on July 16, 2001 and SA's position at that time was that she did not want access. Furthermore, SA told MC that she was tired of the Court proceedings.

89 MC said that SA told her she was fearful that her current foster placement, which had commenced in January of 2000, would break down if the Maternal Grandparents or JA found out where she lived. I should note here that this was a subjective statement by SA as I was advised in Court by counsel for the Maternal Grandparents that her clients had been aware of SA's placement yet had never approached the foster home.

90 MC provided the Court with a lot of detail on the July 28, 2000 access visit at which both JA and PA were present. This was the visit that occurred at the swimming pool. Like EC, MC also said that SA was terrified. MC said that SA told her "That she feared that had her mother got that angry while she was still in the water, she would have held my [MC] head under the water until I couldn't breathe. They were SA's words. She said that she wanted to stop her mom shouting at me in the locker room, but she knew it wouldn't make any difference. And that if there were to be any further visits, then I was to take TH, another visit supervisor along with me, because he would be able to restrain mom by putting his arm around her neck and break her ankles. Those were the child's words." (pages 152, lines 20 to 27 and page 153, lines 1 to 4, Volume I, July 17, 2001 transcript)

91 MC also stated that on December 21, 2000 in Court, it had been agreed by everyone that a visit would be set up for late February of 2001. A visit was scheduled for March 2, 2001 in a child welfare office but JA and PA never showed up for the visit (because MC was going to be the visit supervisor). MC said that a further visit was then set up for May 11, 2001. MC said that SA told her that she wanted her Mother to bring certain of her possessions to this visit and that she would not go to the visit if her Mother did not comply with her request. MC said that she informed JA of SA's request but that JA said SA wouldn't get her possessions until she returned home. MC denied that JA had offered to give her some of the items on SA's list. When told of JA's refusal, SA said that she would not attend the visit. MC said that she told JA that if SA changed her mind, MC would call. On May 11, 2001, JA and PA attended the visit but SA did not.

92 MC, in cross-examination, stated that she did not believe that SA's demands with respect to the May 11 visit were improper. MC said that SA had very little control over her life and this was an area that she could exercise control. MC said she could not remember if she passed this information on to EC but thought SA's foster mother might have.

93 MC said that it was the Director's recommendation that all access between SA and JA and PA be terminated. MC said that the Director's plans in 2001 was to place the Child for adoption.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

94 MC next testified on July 19, 2001.

95 MC confirmed the difficulty with some of EC's notes. When asked, however, if she was contemplating replacing EC, MC said no. In MC's opinion, EC had helped SA process a lot of her difficulties, had built a relationship with her, and was meeting her needs. Furthermore, SA had advised that she was tired of therapy.

96 MC agreed that one view of SA insisting on her toys prior to a visit was of SA trying to manipulate the situation.

97 MC acknowledged that neither the foster mother nor she had discussed with SA her fears of being followed. She acknowledged that it might be a good idea for SA to discuss this with a psychologist but not with either JA or PA present.

98 With respect to the June 29, 2000 visit, MC said that SA had been experiencing car sickness due to her medication. MC said that despite this, JA was hostile to site changes. Furthermore, at the end of this visit, JA insisted that SA climb a steep path despite SA stating that she was tired. SA required help climbing this path. In MC's opinion, JA was hostile this entire visit and SA picked up on this.

99 With respect to the July 2000 Stampede visit supervised by TH, MC said that SA told her at the subsequent July 28, 2000 visit that she supervised that her Mother had begged her to come home and told SA that she would buy her a dog if she did so. In response, SA told her Mother that it was up to the Court to decide. MC later confirmed this with TH. MC acknowledged, however, that this incident was not reported in TH's visit report. What was reported in TH's visit report was that TH overheard PA telling SA she could come home. MC was also not aware that TH had indicated the interactions between SA and JA and PA were healthy at the Stampede visit. Because TH had faxed this visit report directly to the Director's counsel, MC was not aware of this until asked at this hearing.

100 MC acknowledged an oversight on her part when SA had threatened self harm eight days after having had a discussion with SA on a possible adoption in June of 2000. Evidently, MC did not find out about this incident until later and did not make arrangements for SA to see EC. Furthermore, MC did not contact EC to see if the frequency of therapy visits should be changed. MC said that the foster mother would have arranged for SA to see EC immediately after the incident had it been necessary. MC also acknowledged that she did not instruct the foster mother to relay this incident to the family doctor.

101 MC said that she wanted all access terminated after the July 28, 2000 incident at the swimming pool, regardless of whether SA could be adopted, because it was in SA's best interests. She denied that it was a conflict of interest for her to have supervised this visit and then make the decision regarding ongoing access.

102 With respect to the July 28, 2000 incident, MC said the following.

103 MC said that when she told SA it was time to leave the pool, PA asked her to ask what SA wanted. PA then asked SA directly what she wanted and SA wanted to stay. MC said that after discussing the matter with TH, they decided to leave and she told SA they were leaving. At that point, JA grabbed SA's arm and said to MC that "she wanted to stay in the water with SA and then I could sit on the side because we hate having you around anyway." (page 265, lines 10 to 13, Volume II, July 19, 2001 transcript)

104 MC said she told JA that her behaviour was causing SA distress and if she didn't stop, the visit would be

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

terminated. MC said that JA was causing such a commotion in the pool that the lifeguard came over to see if everything was okay. When JA didn't stop, MC said she terminated the visit.

105 In the women's change room, MC said that JA was shrieking at her, said "Get out you fucking bitch", stood close to her face, and wagged her finger at her. MC said that she was afraid. MC said that TH had asked a lifeguard to go into the women's change room and check on her. (page 257, line 8, Volume II, July 19, 2001 transcript)

106 MC said that SA was so terrified of her Mother's behaviour in the change room that she left without putting her leg braces on.

107 MC insisted that JA swore at her despite this not being referenced in her contact notes.

108 With respect to the planned access visit in May of 2001, MC said that she was provided with a list of toys by SA that she wanted before consenting to another access visit. MC said she told SA that she was unlikely to get everything on the list. SA was adamant that she would not attend the visit without these toys. MC said that SA had been telling her since August of 1999 that she wanted items of hers that her Mother had in her possession. When MC relayed this information to JA, JA told her that she would not bring all of the items on the list. MC said to JA that she should call her if she reconsiders but that the visit would not go ahead as planned unless JA changed her mind.

109 MC said that she didn't see it as her role to dissuade SA from refusing to attend visits without her toys. MC said that it was important for SA to express this to her Mother.

110 MC acknowledged that she did not tell JA what SA had also said to her. SA had earlier indicated to MC that once she had all of her possessions, she did not want any further contact with her Mother or Maternal Grandparents.

111 MC said that she started supervising visits after April of 2000. MC acknowledged that this was the only file that she carried in which she was supervising visits. MC denied taking a personal interest in this file. She claimed that she started supervising visits because of the contentious nature of the file.

112 When reminded of a number of incidents in which SA had threatened self harm and that EC had indicated in her notes that she thought SA was heading for depression, MC responded that she had not arranged for a doctor's visit. Furthermore, she saw SA's behaviours as being acts of frustration and not suicidal in nature.

113 I note here the evidence summarized below with respect to Dr. LM's conclusions regarding SA's acting out behaviours. Dr. LM also concluded that SA was not suicidal, although risk factors were present.

114 MC said that she believed it was important to be honest with SA and tell her of upcoming Court dates even if this caused her distress at times.

115 MC denied that SA asked her twice after the May 14, 2000 visit when she could go back and live with JA. MC denied hearing SA tell JA at this visit that she wanted to go home. MC also denied that SA asked her when she could go home at the April 21, 2000 visit.

116 When asked if she believed EC should be removed as SA's therapist because SA was acting out and at times wanted to go back and live with her Mother, MC responded in the negative. MC acknowledged that SA

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

appeared to have some irrational fears such as being followed or kidnapped but did not see SA's behaviour as escalating.

117 MC disagreed with the assertion that a psychologist should be retained to determine why SA was acting out. MC said that SA was tired of stating that she did not want access.

118 MC also disagreed with the assertion that access visits had not caused SA to act out.

119 MC testified again on July 20, 2001. At that time, and in response to a request from counsel for the Mother, MC agreed to have SA assessed by a psychologist in order to address the issues regarding SA's emotional and mental health. Dr. LM was retained for this assessment.

120 Although MC didn't supervise the February 20, 2000 visit, MC understood that this visit went well.

121 With respect to a visit at the zoo on April 21, 2000 which MC supervised, MC said that it was PA and JA who always initiated the hugging with SA. MC said this visit went well and SA was excited to see them. MC could not explain why SA was quiet in the car ride home but thought it could be because she was tired or missed her Mother.

122 At this visit, MC said she asked JA if the latter had drunk during her pregnancy with SA. JA denied that she drank during her pregnancy. MC acknowledged telling JA and PA that they might be able to meet the foster parents at a later visit. MC also acknowledged that JA and PA told her they wanted to attend SA's school functions, wanted a school photograph, and SA's report cards. JA and PA were eventually given a photograph.

123 At later visits, MC said SA was happy, but not excited to see JA and PA. I note here that pictures shown in Court of visits, including visits at Bragg Creek, the zoo, and the Science Centre, showed SA smiling and having a good time.

124 MC acknowledged that JA and PA told her that a fetal alcohol spectrum disorder (hereinafter referred to as "FASD") test of SA was not necessary because JA said she had not consumed alcohol during her pregnancy. MC recalled telling JA and PA that SA had undergone an FASD test. On June 21, 2000 MC told them that SA had been prescribed dexedrine for her attention deficit disorder (hereinafter referred to as "ADD"). MC had no recollection of promising to get back to JA and PA with the FASD test results because she had been told by her supervisor that they were not entitled to those test results. Despite having promised to consider getting a second opinion on whether SA's diagnosis of ADD was correct, MC responded that she never did because her supervisor again told her that JA and PA were not entitled to make this request. MC, however, never told JA or PA that she would not be pursuing a second opinion despite having left them with this impression.

125 When MC asked PA why SA had a fear of basements, PA told her it was because of the manner in which SA was apprehended when six police officers and two caseworkers showed up at their home.

126 MC confirmed telling BA on June 21, 2000 that he did not require counselling, only a risk assessment, before the issue of access to him would be considered.

127 MC said she told PA to explore counselling. MC said she told PA that she was in denial over the abuse of her daughter JA by BA and as a result, had failed to protect her.

128 With respect to the alleged abuse of SA by her uncle NA, MC acknowledged that PA explained what had

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

happened. MC said that PA had told her that despite the fact that no abuse had every happened, BA and she still took the precaution of not allowing their son to be alone with SA again.

129 At the June 29, 2000 visit which MC described as having gone okay, MC said that JA was hostile because she didn't understand the need to change visits in order to accommodate SA's travel sickness due to the dexedrine which had been prescribed for her ADD. MC acknowledged that she knew the foster parents were going to take SA to Medicine Hat yet still insisted that access visits be close to Calgary to minimize any ill effects of travel on SA.

130 As a result of JA's hostility at the June 29 visit and other concerns, MC said she asked JA to come to her office in early July. MC's concerns were JA's hostility, asking inappropriate questions of SA, and implying to SA that SA's biological father was growing marijuana. PA advised MC that JA would not attend this meeting. MC acknowledged that she implied to JA that her next visit to the Stampede would be cancelled if JA didn't attend at this meeting.

131 MC denied that she made a mistake discussing future visits with PA and JA in front of SA despite the fact that these discussions became contentious.

132 With respect to the July 28, 2000 incident at the pool, MC said it was her opinion that SA had spent enough time in the water despite the fact that everyone was enjoying themselves and there was still one hour left in the visit. MC said she was not scared by JA's hostility and yelling but said SA was distressed by JA's behaviour. MC did admit that SA allowed herself to be hugged and kissed at the end of this visit.

133 MC denied the accusation that she should have never supervised visits because she contributed to the animosity between herself and JA and PA in the presence of SA. MC said she never got around to sending SA's report card to JA, and never responded to JA and PA with respect to SA's FASD test results despite having led them to believe she would give them these results. MC acknowledged not getting back to JA and PA on a reassessment of SA's diagnosis of ADD. MC blamed her forgetfulness on a heavy case load.

134 With respect to her implied threat that she would cancel the Stampede visit if JA did not attend a scheduled meeting, MC acknowledged that the Court order then applicable didn't allow her to cancel visits.

135 MC denied that EC was her puppet and recommended termination of visits only because MC, rather than EC, insisted on same.

136 At the conclusion of MC's testimony on this date, I issued a revised access Order which left the decision of access up to SA alone without any reference to EC. I further prohibited MC from supervising any further visits.

137 MC next testified on February 25, 2002.

138 MC stated that SA had never asked her directly to go back and live with JA. MC said that she did not recall SA asking to go back to live with JA at one visit in Bragg Creek in front of PA and SP, and did not recall SA later asking the same question in front of JA and WA at the same visit. MC did acknowledge that SA once told her foster parents that she wanted to return home to live with JA in April of 2000, and on another occasion in March of 2000, SA mentioned this at one of her sessions with EC.

139 MC denied that she instructed EC to write a letter that supported terminating access visits to SA by JA and PA. MC stated that she talked to EC after the July 28 swimming pool incident. EC later met with SA. MC said

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

that after EC had met with SA, EC supported terminating access visits. EC told her that SA had been scared due to JA's anger and thought that her Mother would commit murder [against MC]. EC also reported to her that SA felt unsafe even with supervision.

140 MC acknowledged that she wrote a letter to JA on July 7, 2000 threatening to cancel visits unless JA came to her office to discuss some concerns that MC had with earlier visits. Despite a flurry of faxes and attempted phone calls, the visit on July 14, 2000 went ahead because MC acknowledged that her supervisor told her she had no right to cancel visits in light of the existing Court order.

141 MC said that the faxes she had been receiving from PA were inappropriate because JA and PA weren't putting SA's interests ahead of their own. For example, MC said that JA and PA's request regarding the location of some visits would cause SA to suffer car sickness because of her dexedrine. MC was informed that JA and PA would not attend meetings unless MC's concerns were put into writing, especially given MC's threat to cancel visits.

142 The relationship between MC and PA and JA deteriorated to the point where visit scheduling was supposed to have been scheduled through legal counsel. Despite this process being set up, MC contacted PA to confirm the July 14, 2000 visit at the Stampede and later on had a conversation with PA and JA on July 26 concerning changing the July 28 visit because of SA's car sickness. MC said that JA challenged her because of the fact that the foster parents had planned on taking SA to Medicine Hat. This visit to Medicine Hat never took place.

143 MC said that TH, who supervised the July 14, 2000 visit, told her that this visit had been satisfactory except for the fact that PA had said that mistakes had been made but SA would be returning home and TH wasn't sure if SA had heard this remark. MC said she later learned from SA on the July 28, 2000 visit that while TH had gone to the washroom, JA had said to SA "...she told me that her mom had told her that the Courts didn't have the right to say when she went home, SA did. That if she came home she would buy her a Scottie dog." (page 465, lines 15 to 17, Volume I, February 25, 2002 transcript)

144 MC also said that she had concerns that TH had allowed JA to take SA on rides at the Stampede where they could talk without anyone being present. I note, however, that at visits held at Bragg Creek, SA was allowed to play with JA while MC, the visit supervisor, was talking to other members of JA's family and could not have always heard what was being said by JA to SA. MC claimed that JA and SA were playing so far apart that JA couldn't have said anything to SA.

145 MC also acknowledged that having TH supervise was a mistake because he was not able to take SA to the washroom.

146 MC said that she did not feel she was being unreasonable about changing the July 28 visit from Banff to Calgary because of SA's car sickness. MC also said she was not being unreasonable about insisting this visit occur in the south part of the city despite the fact that the foster parents had earlier taken SA to a location in the north part of the city.

147 On July 27, 2000, MC said that PA and JA requested that MC no longer supervise visits. MC stated that SA was comfortable with her and she wanted continuity. MC denied that tension between herself and PA and JA was escalating; however, approximately two weeks previously, the tension was so bad that access visits were to be scheduled through legal counsel.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

148 Despite the argument that occurred between JA and MC at the July 28, 2000 visit, MC acknowledged that SA still hugged and kissed JA and PA goodbye.

149 MC said that she refused to schedule any further visits after July 28 with a different visit supervisor. In discussions with her supervisor, CW, the decision was made to apply to Court to have the access reviewed. Despite this decision, MC never did make the application for review. Further faxes from PA and JA were not responded to after the July 28 incident as MC stated she never did receive them. The access review in Court did not occur until September 27, 2000. As previously noted, no further access occurred after July 28, 2000 although further attempts were made by MC in 2001 to set up two visits.

150 MC said that she spoke to SA on September 28, 2000 after SA had met with me in Court. SA confirmed that she did not want to see her Mother and that she wanted certain of her belongings. SA told her she was pleased that she got to decide when visits would occur.

151 With respect to the visit scheduled for May 2001 which was cancelled by SA when JA refused to bring all the items on SA's list, MC said that she did not tell JA or PA that SA had told her that once she got all the items on the list, she did not want any further contact with JA or PA. SA said she only wanted contact with her father and Paternal Grandmother.

152 MC confirmed that Dr. LM was retained at the Court's direction in order to assess SA for depression, suicidal tendencies, SA's decision not to have contact with the Maternal Grandparents or her Mother, and to confirm that SA still wanted access to the Paternal Grandmother and her biological father DC.

153 MC said she received a written report from Dr. LM. Prior to receiving this written report, Dr. LM left MC a voice message in which she stated that SA was not suicidal, not depressed, but was very anxious and coped with her anxiety by asserting control. Tests administered by Dr. LM indicated that SA was angry with her Mother.

154 MC testified for the last time on February 26, 2002.

155 MC confirmed that she spoke to Dr. PS at the Court's direction. She said that she followed up this conversation with an e-mail to Dr. PS about JA and the Maternal Grandparents. MC could not recall sending any additional information to Dr. PS. MC said that the information contained in her e-mail was based on information taken from her files. This included statements to the effect that the Maternal Grandparents and JA did not understand the implication of a PGO (ie. they believed SA would be returning home) and that JA had at one time threatened caseworkers. I note here for the record that Dr. PS eventually did receive the Referral and Evaluation Request form, the Information Consolidation, and Dr. LM's report despite MC's lack of recollection as to how this happened.

156 MC said that she never asked JA or BA why they never saw Dr. PS as it was her position that the obligation to follow through with the assessment did not lay with her.

157 MC said that despite Dr. LM's recommendation that SA needed further assessment before more treatment started, she would not recommend this at the time because SA had said she was tired of counselling and wanted a break. Furthermore, SA had been doing well in foster care and in school at the time of Dr. LM's assessment.

158 MC denied trying to slant her request to Dr. LM so as to bias the request in favour of the Director.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

159 MC denied that she had engaged in a deliberate course of action to alienate SA from JA and the Maternal Grandparents.

160 MC said that SA had once told her that she would not see JA or PA again unless MC supervised the visit. MC acknowledged that she was aware of this Court's prior order that she no longer supervise visits because of conflict with JA and PA.

161 MC said that she did not supply JA with pictures of SA because she believed that none had been taken due to SA's absence from school. As for the report cards, MC said that SA missed the last day of school when report cards were handed out. MC acknowledged that she could have returned to the school at any time to get the report card.

162 MC confirmed the Director's position that all access with the Maternal Grandparents and JA be terminated. MC said that SA's anxiety level had dropped and her social skills had improved and visits would upset her. Furthermore, when visits had occurred, there had been a pattern of behaviour by both JA and PA of telling SA that she would be returning home to live despite both having been told that such comments were prohibited.

163 MC confirmed that SA knew who to contact if she ever wanted access visits restarted.

Foster Mother G

164 G testified on July 18, 2001. She said that SA moved into her home on January 31, 2000 from the home of the Paternal Grandmother.

165 Upon arriving, G said that SA said "Nobody will be able to find me here." (page 70, lines 19 & 20, July 18, 2001 transcript)

166 G said that SA was very angry the first day in her home. SA told her that her Mother was responsible for the break down of her prior placement with the Paternal Grandmother. SA also told G that her Mother had said that she could not see her step-sister unless she moved back home.

167 Within a few weeks of moving in, G said that she was told there would be a Court ordered access visit. When informed about this visit, G said that SA was reluctant to attend and then started acting up in school. G also said that SA told her she would disguise herself for this visit and not wear her new glasses and coat so that her Mother wouldn't recognize her if she saw SA elsewhere.

168 G said that SA always had a fear of coming into Calgary for visits out of a fear that she would be snatched.

169 On another visit which SA wanted to attend, G said that the day of the visit, SA insisted on taking a whistle to this visit in case JA or PA tried to grab her. SA also told G that she wanted two of her possessions that her Mother had. SA returned from this visit with Valentine's gifts.

170 G said that SA told her about being afraid of her Mother trying to take her to Ontario (see paragraph 31 of the PGO Decision). SA also told her that her Mother "...had tried...gone on the computer, to find out how to make a bomb to blow up Social Services." (page 78, lines 7 to 9, July 18, 2001 transcript)

171 G said SA's fear of being snatched or of going down to basements was mentioned on several occasions. G said that on one access visit, SA was left alone with JA for forty minutes at the Calgary Stampede while her su-

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

pervisor TH went to the washroom. G said that during this time period, SA told her that JA asked when she was coming home, and told SA that it was up to her to make this decision and not the Judge. It was after this visit that SA insisted that only MC be the visit supervisor.

172 G said that PA provided her with Bible camp forms, through a third party, for SA. G said that she wanted SA to attend but SA refused because she was worried that she might be snatched.

173 G said that SA was fearful for her [G's] safety if she were to meet PA or JA.

174 G said that she did not do anything to assuage SA's fears. Rather, she passed on these concerns to both EC and MC.

175 G commented that when SA knew there were visits coming up, she acted up, sometimes before the visit and sometimes after the visit. The school also reported similar behaviour. After visits, SA would be withdrawn. G stated that in her observation, there was a causal connection between SA's acting out behaviour and SA knowing about an upcoming visit or having been on a visit. On one occasion, G said that SA told her not to tell her when visits were going to occur so that she wouldn't act out.

176 G confirmed that after the July 28, 2000 visit with the incident at the swimming pool, SA told her that she was fearful that her Mother came close to holding MC's head under the water. G said that on another occasion, SA told her that her Mother was mean. The fear of MC being injured was another of SA's fears that she shared with G on a number of occasions.

177 With respect to PA, G said that SA said on one occasion that she didn't mind seeing her again because PA had tried to calm JA down at an earlier visit at the zoo. G said that she encouraged SA to maintain phone contact with PA; however, SA no longer had the desire to do so.

178 With respect to BA, SA told G that she didn't want to see him because he yelled when she was with him.

179 On another occasion, SA told G that she wanted her step-sister to come live with her so that she would be safe. G said she was left with the feeling that the only reason SA went on access visits was for the purpose of seeing her step-sister.

180 Since being put on dexedrine in May of 2000, G said that SA's focus in school had improved.

181 G said that after I had met with SA in September of 2000 and told her it was up to her to decide on visits, SA felt empowered and in control. G said that SA's behaviour in school improved dramatically for the balance of the school year. Furthermore, G said that SA became less apprehensive about Court because SA knew that she would determine when visits would occur.

182 Since September of 2000, G said that SA has been happier and doing better in school.

183 G confirmed that SA was angry the May 2001 visit did not occur because her Mother refused to bring to the visit the items that SA had requested. G acknowledged that SA was likely manipulating matters and being unreasonable to the point where she knew JA would not agree to her terms. G also said that after the May cancellation, SA went from wanting visits if she got her toys to not wanting access visits at all.

184 G was insistent that she did not discourage SA from attending visits. Furthermore, she never observed MC

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

in her residence discouraging SA from attending visits. To the contrary, G said that she encouraged SA to attend visits, but always gave her the option of deciding. G said that SA was very strong willed and was not suggestible. Furthermore, G said that SA was not prone to exaggeration.

185 G confirmed that on July 16, 2001 when MC tried to speak to SA, she refused to speak to MC because SA said she did not have anything further to add. When G asked SA if she wanted to see her Mother, SA said no.

186 When SA was asked by both G and MC to relate a happy memory about her Mother, G said "...she [SA] said that her best memory of her mom, was when she punched ...when the mom punched the mom's brother out, because he left SA in the bathroom." (page 91, lines 2 to 5, July 18, 2001 transcript)

187 G said that SA not wanting to see her Mother was unique in her experience as a foster mother. G said that most of the children in her care were happy to see their mothers.

Evidence Presented by the Mother

JA

188 JA testified on February 28, 2002. She was the only witness for her case.

189 JA said that she was under the impression from having read paragraph 244 of the PGO Decision that she had an opportunity to have SA returned to her care if she could demonstrate stability in her life.

190 JA stated that it was SA's apprehension and subsequent PGO that forced her to reevaluate her life.

191 JA said that she had been in a common law relationship for the past four and one-half years. Other than for one incident at the beginning of this relationship wherein she went into a women's shelter because of domestic abuse, JA claimed that everything was going very well. She described herself as a stay at home mother with their new daughter M, doing part time work out of their house. She said her current partner had been steadily employed with the same employer since 1995. They have many friends, and JA said that she goes to church with M every Sunday.

192 JA also said that she did not believe that the sexual abuse she had suffered had affected her ability to parent a child. In this regard, she disagreed with Dr. LM's evidence that JA continued to downplay the significance of her dysfunctional background.

193 JA said there were twelve supervised visits in all that took place after the PGO had been granted. JA maintained that SA was happy to see her at all of the visits. Furthermore, at the May 2000 visit in Bragg Creek, JA said that SA asked MC in her presence when she could return home to JA.

194 JA admitted that on two separate visits, she asked SA about returning home. She acknowledged in Court that this was not appropriate.

195 With respect to the July 28, 2000 visit at the swimming pool, JA stated that after one hour in the pool, MC grabbed SA's arm and said it was time to leave because her [MC's] skin was getting wrinkly. JA acknowledged that she raised her voice to MC in the pool and asked MC why the latter kept changing visits. She further asked SA in front of MC what she wanted to do and that SA said she wanted to stay. In the dressing room in front of SA and PA, JA said she again raised her voice and pointed her finger at MC in anger but denied swearing or

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

striking MC. JA claimed that MC had also raised her voice. At the end of this visit, JA said that SA gave her hugs and kisses.

196 JA acknowledged that she will not allow her father BA to babysit her daughter M on an unsupervised basis. She said "I have forgiven my father for what he has done. But I don't feel that any risks should be taken." (page 879, lines 3 to 5, Volume III, February 28, 2002 transcript)

197 JA supported her father BA's application for access to SA but said it should be supervised.

198 JA said that SA was under pressure from her therapist and caseworkers not to see her or the Maternal Grandparents. JA said that SA was not capable of understanding what she was saying. Under cross-examination, JA acknowledged that she had no factual basis upon which to make the aforementioned statements.

199 JA said that if SA were to tell her to her face that she wanted no further visits, this would satisfy her. JA acknowledged that Dr. LM had testified in Court that SA had serious emotional problems that had arisen out of her relationship with JA. JA also acknowledged that such a visit would likely cause SA to act out. JA felt, however, that this visit should occur.

200 JA said that she only went to one therapy session after the PGO to deal with the issue of the sexual abuse she suffered while growing up.

201 JA acknowledged that the major reason she did not go to a scheduled access visit in March 2001 was because of the fact that MC would be supervising.

202 With respect to the May 2001 planned access visit, JA acknowledged that she initially said she would not bring all of the toys that SA wanted despite being told that SA would not otherwise attend. JA said that she later told MC she would bring some of the toys but claimed that MC never got back to her about whether the visit would still go ahead.

203 JA could not explain some of SA's comments about her before the apprehension concerning living in the basement and not being fed. JA did acknowledge, however, that she didn't do SA's cerebral palsy exercises with her as instructed by the hospital.

204 JA said her problems with the caseworkers was due to a lack of communication, failure to send her pictures and report cards of SA, visit plans being constantly changed, and SA being put on dexedrine.

205 JA was prepared to acknowledge that she might have something to do with SA's anger. In this regard, she acknowledged that her failure to assist SA with her exercises, her use of marijuana, and her dysfunctional and at times violent relationship with DC could have caused SA to be angry.

206 JA said that she now knows not to let men abuse her.

207 As for counselling to deal with her childhood sexual abuse, JA said she will go when she is ready.

Evidence Presented by the Maternal Grandparents

BA

208 BA was the first witness. He testified on July 14, 2003. His evidence was as follows.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

209 BA said that he had been married to PA since 1967, had lived in the same home since 1972, and had been with the same employer since 1970. PA and he have three grown children including JA and NA.

210 BA said PA and he are actively involved in their church activities. He said that he confided in his Pastor WD with respect to his sexual abuse of JA and told him that this had occurred while JA was between the ages of seven and fourteen while both PA and he were doing the bar scene. He told WD that he stopped because he knew it was wrong and had sought the forgiveness of both JA and PA. He further said that since 1989, PA and he had quit drinking socially.

211 When asked whether JA or he had ever sought counselling, BA replied that he had not "Because when a person forgives, they move on from there. And I believe that God has forgiven in this case. He doesn't hold it over us to do something else, and something else, and something else. He forgives. And that's it. And on that same basis, when forgiveness is given, we move on." (page 979, lines 19 to 24, July 14, 2003 transcript)

212 BA also said "I've been to the counsellor who is Jesus Christ. He has forgiven us. He deals with things in a manner — in a different manner. Forgiveness is something that when it is offered, when it is given, then it is free...The result of the forgiveness, when it's given causes one to be a voluntarily different person as opposed to something imposed upon them." (page 981, line 27, and page 982, lines 1 to 3 and lines 21 to 23, July 14, 2003 transcript)

213 BA said that he last saw SA in January of 1998 when she had been apprehended. He said that SA was frightened and was hiding from the six police officers and two child welfare workers that had come to his home to do the apprehension.

214 Prior to the apprehension, BA said that he was very close to SA. She called him "papa". He did various activities with her and helped SA perform her stretches for her cerebral palsy.

215 BA said that it was his understanding that JA had a chance to have SA returned despite the PGO. He said that he met RR in February of 1999 to discuss what needed to be done before SA was returned home. RR told him that the family would have to attend mediation and there would have to be good visits between SA and PA and JA.

216 At a mediation meeting, BA said he was told that SA would determine when she wanted visits. BA did not like this position and felt that the Director had undermined the visits by giving SA the power to control them.

217 Furthermore, BA believed there would be visits and only the number and duration would be set by the caseworker. In any event, BA said there were two visits after the PGO and then they were cancelled until April of 1999 when they continued again until July 28, 1999.

218 When told by SD at a meeting in August of 1999 that future access visits would be cancelled, BA said he was surprised because the family had attended this meeting to inquire about more access visits. He said that he was told visits were being cancelled because there had been no change in JA's behaviour and SA had been regressing in her behaviour and had been disruptive in school.

219 BA said he couldn't understand the comment about SA's disruptive behaviour in school because JA and PA had two visits in July and nothing was said. Furthermore, RR had written a letter on June 15, 1999 wherein he stated that it was too early to tell if visits were causing SA to act up in school.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

220 BA said he got angry and told the caseworkers present at this meeting that "You people are going to be held accountable for the decisions that you are making today. My reference is that we are all going to be held accountable for our actions before God." (page 999, lines 11 to 14, July 14, 2003 transcript)

221 BA said that after the January 7, 2000 Court appearance before me, SD was still not complying with my Order because only PA was getting access. After the February 14, 2000 Court appearance wherein I ordered specified access, BA said that no access occurred because EC did not recommend it.

222 BA said that their relationship with MC was strained. Despite an initial meeting with MC wherein it was agreed that everyone would sit down after each visit and discuss concerns, this was not done. BA said MC did not give them any details of her concerns and threatened to cancel visits despite the then applicable Order only allowing EC or SA to cancel visits.

223 BA said that MC was supposed to give them information on SA's ADD diagnosis as they had concerns with SA taking dexedrine. Report cards were also not sent to them.

224 BA said that MC further increased the tension between them by being unreasonable about site selections for visits and then changing locations on them without notice. BA claimed that MC was dishonest in Court as to what had happened at visits.

225 BA said that he wouldn't do anything that would make SA feel unhappy and uncomfortable but "That is dependent upon what is right...What is the right thing to do according to probably what the Bible would indicate, in my estimation." (page 1051, lines 6 to 9, July 14, 2003 transcript)

226 When asked if he would place his own needs ahead of SA, BA said that SA was taken against her wishes, should not have been apprehended because there was little evidence supporting her apprehension, and that a PGO was not necessary. Furthermore, the removal of access had alienated SA from their family and had hurt her. SA wanted to return to her Mother and was not stating the truth when she said she didn't want any further access. BA said that SA's change in attitude about visits did not come from his family.

227 In BA's opinion, it was both MC and EC that had turned SA against them.

228 Having said that there was no basis for the apprehension, BA then admitted that part of the reason SA was in care was because of what he had done to JA.

229 BA said that SA had never been locked in their basement and said her fear of being snatched arose out of the apprehension.

230 BA said that he didn't follow through with the assessment by Dr. PS which would have been paid for by the Director because Dr. PS had received biased information from MC. BA also said that he did not follow through with a sexual risk assessment with either Dr. B. or Dr. D because he couldn't afford to pay the quoted fee.

231 BA was reminded that his daughter JA said that she could let SA go if she heard SA tell her directly face to face that she didn't want any more access. BA claimed this would be unfair and that a number of visits would have to occur before such a statement would have any validity.

232 When reminded that Dr. LM had stated in her evidence that SA had serious emotional problems with re-

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

spect to her relationship with her Mother, BA claimed that access should still proceed whereby SA would be reintroduced to her family using facilitators. He said that it would take a while to undo everything that had happened to SA. Furthermore, access should occur even if it caused emotional damage to SA and he would be prepared to take that risk.

233 BA said that JA's current home is tidy and that he liked her current partner with whom she had another daughter M.

234 In response to a question from the Court, BA said "the child's best interest should be determined by not necessarily a law, but that law should be subject to what is understood biblically. The Bible does talk about righteous and unrighteous laws." (page 1078, lines 11 to 15, July 14, 2003 transcript)

235 As for the usefulness of psychologists and mental health specialists, BA said "I believe that they have a place, providing that they do not bring from their own past their problems and project them upon their clients. And I believe that the person who is indeed guided by the spirit of God will make correct decisions, but somebody who is necessarily guided that way can make decisions based upon their — what has been input into their life." (page 1079, lines 24 to 27, and page 1080, lines 1 to 4, July 14, 2003 transcript)

PA

236 PA testified for the first time on July 15, 2003. Her evidence at that time was as follows.

237 PA said that she had been married for thirty-six years and had lived in the same home for thirty years. She said they had three children, with JA being the middle child.

238 PA said she had attended the same church for 30 years.

239 PA said that it was her understanding of the PGO Decision that JA and she would get regular supervised access to SA, and only the duration and number of visits would be determined by the caseworker. Furthermore, if JA showed stability in her life, SA would be returned to the care of JA.

240 Until approximately 1987, PA acknowledged that BA and she had a drinking problem. It was during this time period that BA sexually abused his daughter JA. PA said that one of her sons had commented on their drinking to another person and their concern for their children led them to quit.

241 When BA disclosed to her the sexual abuse he had committed on JA over the years, PA said that she forgave BA. PA said she never discussed this with JA because the matter had been dealt with through forgiveness.

242 PA adamantly denied that the sexual abuse perpetrated on JA had any affect on JA's parenting abilities. In her opinion, JA was a good parent who was sometimes overprotective of SA.

243 PA stated that JA gave birth to SA when she was eighteen years of age. Between the ages of sixteen and eighteen, PA acknowledged that JA ran away from home and used drugs. In her mind, PA wondered whether their use of alcohol was the cause of JA's rebellious behaviour.

244 PA said that she sees JA and her new granddaughter M almost daily.

245 On her first visit with SA on January 16, 1999 subsequent to the PGO Decision, PA said that SA was ex-

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

cited to see her. PA was subsequently informed by RR, the caseworker at that time, that further access visits would be curtailed for approximately three to six months based on EC's advice in order to give SA time to settle into the Paternal Grandmother's home from her prior foster placement. PA said she told RR this was unreasonable based on her interpretation of visits being at the discretion of the caseworker. In her opinion, visits should have been increased, not decreased.

246 In a meeting with RR on February 8, 1999, PA said that RR told her only a very few PGOs get set aside after the fact. In order for this to possibly happen, however, PA said that RR told her JA would have to attend counselling, and the family would need to attend mediation. PA said she told RR they wanted pictures of SA and her report cards, as well as assurances that SA would receive their gifts.

247 PA said she spoke to DG, the Children's Advocate. She said that DG informed her that he had spoken to SA who confirmed her desire for visits. Furthermore, DG told her that he couldn't understand why access was being denied.

248 PA said that access visits resumed on April 5, 1999 after preliminary discussions on mediation had occurred. At this visit, MN acted as the visit supervisor.

249 On the April 25, 1999 visit, PA stated that SA whispered to her when MN was not present that her father DC had remarried and to pass along the message "Just tell her [JA] she can kick the wall." (page 1141, line 27, July 15, 2003 transcript)

250 On the May 29, 1999 visit, PA said that JA told SA she was going to have a sister and that SA was excited. PA said that SA commented to her about how PA was always talking about God. SA also told her that she was watching television twenty-four hours a day. Later on that visit, PA said that SA told her "Don't touch me, you're slime." (page 1148, lines 4 & 5, July 15, 2003 transcript)

251 On the access visit that occurred on July 1, 1999, PA denied that she had asked SA where she was living as reported by MN. PA claimed that she had merely asked SA if she liked her new foster placement.

252 When asked when she first was given the reasons why access was terminated, PA said it was when she heard the evidence of SD in Court in April of 2000. There were three reasons given. PA said that she heard SD claim that PA had whispered to SA on a visit and asked her where she was then living. Also, SD had claimed that JA and she had been giving SA too much chocolate to eat. Finally, SD claimed that EC told her that PA had an explosive temper.

253 With respect to the last two reasons, PA claimed that she had never met EC. As to the concern with respect to chocolates, PA said that she only brought chocolates to visits which occurred in the Director's offices when it was not possible to take SA out for a proper meal.

254 PA next testified on July 16, 2003.

255 PA said that on March 26, 1999, RR called her to discuss mediation and threatened to cancel visits because SA was adjusting to her new foster placement. PA said this decision was not in keeping with the spirit of the PGO Decision with respect to access.

256 On May 13, 1999, RR told her that he was changing the visit schedule and that her visits would be combined with JA and occur once per month. Previously, she saw SA once per month and JA separately saw SA

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

once per month.

257 At the July 28, 1999 visit, PA said that MN warned JA and her about not whispering. PA said she found this strange because at a visit in April, MN had sat in the car while the visit occurred. PA admitted that she heard JA ask SA where she was living and whether SA's visits with her father had been supervised. When MN warned JA that one more inappropriate comment would result in the visit being cancelled, JA said "try it" under her breath. In PA's opinion, MN was being unreasonable about her threat to cancel visits.

258 PA was shown pictures of access visits with SA on July 28, 1999, February 20, 2000, March 25, 2000, April 20, 2000, May 14, 2000, July 14, 2000, and July 28, 2000. All photographs showed SA as a happy child enjoying her access visits.

259 PA said she contacted SD on August 23, 1999 and told her that JA and she did not want MN supervising any more visits.

260 On August 24, 1999, PA said SD served them with papers which terminated access. PA was surprised. She said that the reasons given were that SA had regressed, had problems in school, JA had not made changes requested by the Director, and PA was giving SA too much chocolate on visits.

261 After the Court hearing on January 7, 2000, PA said that SD told JA and her that PA could see SA for one hour in a Director's office. JA, however, would not get access until she retained a lawyer. Their request for visits went unanswered by SD until February 7 despite SD being in Court on January 7, 2000. On February 7, PA said that SD told them SA had gone to a new foster home but she would set up visits later that month despite EC not being in favour of this. PA noted that the Director's counsel at that time had also given permission for access to PA.

262 As of the February 14, 2000 Court date, PA said that she had not yet had a visit. Pursuant to my Order, PA said she got an access visit on February 20, 2000. Both this visit and the one that followed on March 25 were supervised by TH and were good visits with SA.

263 PA said that after the new access Order of April 4, 2000, MC gave them guidelines with respect to the visits and said that they would sit down after each visit and discuss any concerns.

264 At the April 21, 2000 visit supervised by MC, PA said that MC told her that JA and she might eventually get to meet SA's current foster placement, get SA's report cards, and attend school functions.

265 At the May 14, 2000 visit, PA said that JA was left unattended with SA and JA's new baby M on a number of occasions while MC visited with other family members in attendance. At the end of this visit, PA said that MC told her that visits were going well, there was no need for Court because visits would not be terminated, visits would eventually become unsupervised, and that the PGO could be reversed.

266 In PA's opinion, this was not a difficult case despite MC believing such to be the case. PA reaffirmed her belief that the Director did not have any right to apprehend SA.

267 PA testified for the last time on July 17, 2003.

268 In a June 21, 2000 phone call with MC, PA was advised that SA had been put on dexedrine for ADD and that this medication caused SA to suffer from nausea in car rides so the upcoming visit site was changed. MC

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

also told her that BA only needed to get an assessment, not counselling with respect to his request to get access visits. In response to PA's comment that SA was being coached not to make phone calls to her family, MC told her that SA knew she could make calls at any time she wanted. Finally, MC told PA that the family needed counselling in addition to the forgiveness that had occurred.

269 PA insisted that JA had never abused or neglected SA despite having read the PGO Decision. Despite being told by MC that SA would not be returning home, PA believed that such was the case because of earlier conversations with RR.

270 At a June 29, 2000 visit supervised by MC, PA said that JA played with SA but that SA was subdued. JA noticed a blister on SA's foot and was told by MC that SA had not yet returned to the hospital to have her braces adjusted. PA said this was a good visit with SA.

271 At this visit, there was a discussion about wild flowers. SA said "Well my dad grows wild flowers" and JA replied "Yeah, I bet he does." (page 1355, lines 24 to 26, July 17, 2003 transcript)

272 In a July 7, 2000 phone conversation, PA said that MC told her there were problems at the June 29 visit and MC wanted to meet with JA. PA said that JA faxed a letter to MC in which she stated that she could make this meeting. PA said that MC told her they couldn't take SA very far on an access visit because of SA's nausea from long car rides. Yet, in this same conversation, MC told her that SA's foster parents were going to take her on a three hour car ride to visit their family. PA said she told MC that JA and she would prefer TH to supervise visits instead of MC. Finally, PA said she told MC to get a second medical opinion on SA because BA and she had concerns with SA being on dexedrine.

273 On the July 14, 2000 visit, TH supervised. This was the visit where TH left SA alone with JA and PA because he had to use the washroom.

274 In a July 26, 2000 phone call, MC told PA that she could not get any medical information on SA because she wasn't a guardian. Furthermore, PA said she was told that there would need to be cooperation before the Director would reconsider their PGO on SA. PA said this was the phone call where MC claimed that TH had told her that SA told him that she was worried about being snatched and that she was told she could come home. PA said she told MC that when SA returns home, she would not need to be on dexedrine. Finally, PA said that MC asked her if BA had completed his assessment.

275 PA said that the July 28, 2000 access visit at the swimming pool was the last time JA and she saw SA. Both TH and MC were at this visit as supervisors. PA said that MC told SA to tell her Mother that there would not be any photographs taken that JA had wanted for her birthday. PA heard JA tell SA that MC had changed the visit plans again. It was at this visit that PA gave SA a brochure about a bible camp that SA could go to for the summer.

276 PA said that MC ended this access visit early. A discussion occurred in the pool which was loud enough for a lifeguard to come over and enquire as to whether everything was okay. JA asked SA in front of TH and MC if she wanted to stay and was warned the visit would be terminated if JA continued with these comments. According to PA, a discussion occurred between JA and MC in the change room wherein MC told JA not to yell. PA said that JA was not yelling nor did she swear at MC as claimed by MC in her evidence.

277 With respect to the attempt to set up visits in February and March of 2001, PA said there was poor commu-

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

nication between the parties. PA suggested that MC was trying to sabotage the visits as SA was now insisting that only MC supervise visits.

278 On one of the attempted visits at which JA and PA attended but SA did not, PA said that JA had brought some of the toys that SA wanted. When they arrived for the visit, MC told them that it had been cancelled.

279 In July of 2001, PA said that the Court recognized MC was a problem by revising the access Order such that access would be at SA's discretion but MC could not be the supervisor. Despite this revised Order, no further access visits occurred.

280 PA said that she would respect SA's wishes if the latter didn't want to see JA or her. PA said, however, that SA's views had been contaminated by MD and the Director. As such, she was prepared to put SA through the turmoil and trauma of access visits. Furthermore, as with BA, there would have to be a number of these visits in order to determine SA's true feelings. In her mind, the trauma of these visits had to be weighed against the trauma caused to SA by MD and the Director. In other words, the visits were necessary to fix the damage caused to SA by MD and the Director.

281 PA said that she never asked JA if she needed help after BA made his disclosure to her about having sexually abused JA. This disclosure occurred approximately two years after BA had ceased his abuse of JA. PA also said that she wasn't interested in any particulars of the abuse in order to determine the extent of damage suffered by JA despite having just returned from a church retreat and having learned of the emotional scars that a person can incur from such abuse. In her opinion, "I realized that true forgiveness could be found in Jesus Christ and that we could just move on from there." (page 1451, lines 18 to 20, July 17, 2003 transcript).

282 PA did not insist on BA going for therapy. In her mind, BA was a different person when the disclosure was made. He had quit drinking and had turned to God.

283 PA acknowledged that she put her own interests ahead of JA's by wanting to keep her marriage intact but did not feel any guilt in doing so.

284 In response to a question from the Court, PA acknowledged there was a difference between the healing of the mind and the healing of the soul. She said that BA's soul had been healed when he returned to God. While acknowledging that mental health specialists play a role, PA said that God can also heal the mind. Because she observed no animosity between BA and JA after BA's disclosure, she knew that JA would not need professional help because "The healing was instantaneously." (page 1470, line 22, July 17, 2003 transcript)

285 PA had no recollection of having been warned by the police and the Director in 1997 not to let their son NA babysit SA because of allegations made by SA that she had been sexually abused by him. PA acknowledged, however, that BA and she did not allow NA to be left alone again with SA.

286 PA said that BA has never been left alone to babysit JA's new baby M because there had never been any need to do so.

287 PA admitted that BA and she had sent JA and SA to Ontario because they knew the Director was looking to apprehend SA. Furthermore, when JA and SA returned home, SA was schooled at home so that the Director would not know of her whereabouts.

288 PA acknowledged that BA and she had always had animosity towards the Director.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

WA

289 WA is BA's brother. WA testified on July 15, 2003.

290 WA said that he has known SA since her birth. He said that he saw SA about eight times per year. He stated that he last saw SA at a May 2000 access visit at which he and his partner SP had attended.

291 He said that MC supervised this visit. He stated that he had talked to MC while SA played with JA and PA. As such, while it would have been possible for MC to have kept SA in sight, it would not have been possible for MC to have overheard all of the discussions between JA and SA.

292 WA said that SA really enjoyed the visit. He identified photographs taken at the visit which clearly showed SA having a good time. He said the only time that SA was subdued was when the visit ended.

293 WA claimed that twice during this visit, SA asked when she could return home. He said that he overheard JA telling SA that they couldn't discuss this on visits.

294 WA said that BA had a close relationship with SA.

295 As a father himself, WA said that he never had any concerns in the way SA was raised and was therefore surprised when she was apprehended. He had heard the reason for the apprehension was that SA's needs had not been properly looked after.

296 WA said that his brother made him aware of the fact that BA had sexually abused his daughter JA.

297 When at JA's home, WA said that he found it to be neat and clean. He also found JA to be an attentive parent.

SP

298 SP is WA's partner. She said that she had known the Maternal Grandparents since 1990 and confirmed WA's evidence that she had seen SA approximately eight times per years before her apprehension.

299 SP said that SA had a good relationship with BA. She said that SA saw him as a role model and called him "papa".

300 At the May 2000 access visit, she said that everyone had fun and that JA and SA played together like two children.

301 She confirmed WA's evidence and said that MC could not have always heard everything that was said to SA by JA even though MC kept SA in sight.

302 SP also confirmed WA's evidence that she twice heard SA ask when she could go home and heard JA say that she couldn't discuss this in response.

303 SP said that she did not observe anything inappropriate happen at the visit. She said that SA was sad when the visit ended.

304 SP said that she was not aware as to the reason SA was in the care of the Director.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

WD

305 At the time of his testimony, WD has been a pastor for over thirty years. He testified on July 16, 2003.

306 WD said that he has known the Maternal Grandparents and JA since becoming Pastor of their church in September of 2000.

307 WD said that shortly after taking up his position, BA came to him and disclosed the abuse he had perpetrated on JA.

308 WD said the Maternal Grandparents kept him apprised of these proceedings. At their request, he provided them with the name of a Christian psychologist. I note here that this psychologist was never contacted.

309 WD described the Maternal Grandparents and JA as a close knit family who are faithful adherents to both their church and their religion.

310 WD said that when a person accepts God into their life and seeks forgiveness, there is a freedom that comes. When repentance and change follows, this can lead a person to make drastic changes in their life. WD believed that BA was genuine in his desire to change.

311 WD was surprised to learn that none of the family had sat down and talked over the abuse of JA. While expressing some concern over this, WD also acknowledged that communication can be verbal or it can be expressed through behaviour changes.

312 WD said that he was not aware as to why SA was in the care of the Director.

Evidence Requested by the Court

Dr. LM

313 Dr. LM testified on February 26, 2002. Dr. LM prepared a report for the Court dated November 23, 2001. She was qualified as an expert in clinical psychology. Dr. LM was retained by MC at the Court's request. Her evidence was as follows.

314 Dr. LM stated she was contacted by MC in August of 2001 and asked to assess SA on her thoughts and feelings towards all family members, and in particular, JA and PA. MC told her that an objective assessment was required because the Maternal Grandparents and the Mother had alleged that MC had both biased and coerced SA in her feelings towards them. MC also told her that she had been threatened by JA and as a result, access visits had been terminated. Finally, Dr. LM said she was asked to determine if SA was depressed, suicidal or psychotic.

315 Dr. LM said that she had previously assessed JA for purposes of reporting to the Court at the PGO hearing. She reviewed her notes from this assessment. In addition, Dr. LM said that she talked to the foster mother G and had her fill out a checklist. Despite her unfavourable assessment of JA at the PGO trial, Dr. LM did not have concerns in seeing SA. Dr. LM said that she assumes the child is her client.

316 Dr. LM said that she told SA she had been retained by the Court to make a decision with respect to SA's best interests. She described SA as being very apprehensive. Dr. LM saw SA on seven occasions by herself, and

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

on one occasion with the foster mother G. She also saw G by herself on one occasion.

317 On a family relations test that she administered, Dr. LM said that SA had a lot of negative and turbulent feelings both given and received between herself and her Mother. Dr. LM confirmed her initial assumption that SA wanted no contact with her Mother and Maternal Grandparents based on results from this test, her discussions with MC and the foster mother. Dr. LM was of the opinion that SA was overwhelmed by negative emotions and did not know how to cope with them. These feelings caused SA to feel frustrated.

318 During cross examination, Dr. LM acknowledged that SA not having seen her Mother and Maternal Grandparents for a while could have been a contributing factor as to why she didn't see these people as having a significant place in her life. Dr. LM said she had not been aware of the fact that SA had not seen JA or PA for a while and hadn't seen BA since before the PGO. Dr. LM stated, however, that the sporadic nature of the access visits was not a cause of SA's turbulent feelings.

319 Other than the information gleaned from this test, Dr. LM was not able to get further information from SA about JA and the Maternal Grandparents as SA was very reluctant to discuss them. Dr. LM said that she deliberately avoided discussing visits directly with SA in order to adopt a non-confrontational method in talking to SA.

320 With respect to the invalid scoring on a depression inventory test that she administered, Dr. LM opined that SA was denying and repressing her negative feelings because they were overwhelming her. Dr. LM was not able to state what the root source was or why she repressed them but did conclude that SA was not ready for therapy. In her opinion, therapy would not work until SA received help in learning how to express her negative feelings.

321 Dr. LM was very concerned about SA's emotional health. Despite her difficulty in managing her negative emotions, Dr. LM was of the opinion that SA was not then currently depressed although risk factors for depression were present. Her conclusion was based on her discussions with SA and the foster mother G as well as the child behaviour checklist completed by G. SA was feeling frustration which was causing her to have suicidal thoughts from time to time. Furthermore, Dr. LM did not believe SA suffered from an ongoing sustained sense of hopelessness at that time despite the presence of some suicidal behaviours such as asking her foster mother to kill her. Dr. LM stated that despite the presence of suicidal thoughts and gestures, she did not believe that SA would form the intent to kill herself; however, caution was urged because children have been known to take their lives in an impulsive way.

322 Dr. LM acknowledged that the written referral that she received from MC had as the service objective "to confirm that SA is not suicidal, to explore possible depression, to ensure that SA is still of the opinion she does not want contact with her Mother and [Maternal] Grandmother, confirm that SA does not want contact with her grandfather BA, to confirm SA feels safe when she visits with her father and Paternal Grandmother." (page 581, lines 7 to 14, Volume II, February 26, 2002 transcript)

323 While she acknowledged that the wording used in the written referral might be suggestive of the answers that MC was looking for, and that some caseworkers who have a bias suggest how they would like an assessment to turn out, Dr. LM again confirmed that she conducted an objective assessment and was not influenced in any way to give an opinion that matched the written referral she received from MC.

324 Dr. LM said that she confined her assessment to the specific questions asked but would have liked to have done a more broad based assessment in order to make comprehensive recommendations such as how to help SA.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

She confirmed that based on the work she had done, the only recommendations she could make dealt with the issue of access.

325 Dr. LM acknowledged in cross examination that if the initial request had been for her to determine whether SA had been alienated from her Mother or the Maternal Grandparents, she would have talked to them. That is, the nature of the request from MC governed the way she proceeded to do her investigation and form her opinion.

326 Dr. LM said that she deliberately chose not to interview MC, or interview SA about her relationship with MC. Furthermore, Dr. LM said that she was aware of the conflict between MC and JA. Dr. LM did acknowledge in cross examination that she did not speak to either JA or PA about their relationship with MC. Dr. LM said that in any event, she did not base her opinion on SA's mental health on anything that MC told her.

327 Dr. LM said that she was told by G, the foster mother, that on SA's first access visit after the PGO, SA took a whistle so that she could use same if anything frightening happened. G told her that she wondered if this was as a result of the fact that SA had been kept hidden in the basement for four months while the Director looked for her. G told her that SA had a fear of being kidnapped by JA and the Maternal Grandparents.

328 With respect to the question as to whether MC had biased SA in her feelings towards the Maternal Grandparents and her Mother, Dr. LM said "...I didn't feel that this child was coerced. I didn't feel that she was coerced to present the thoughts and feelings that I did obtain from her. I didn't have any sense that people were telling her what to feel or what to say...I did not discuss her relationship with MC at all and that was a deliberate intention to get as much as possible, just a direct disclosure from her about her thoughts and feelings about herself, her life and her family." (page 579, lines 26 and 27, and page 580, lines 1 to 9, Volume II, February 26, 2002 transcript)

329 Dr. LM concluded that SA did not want contact with her Mother and PA. She was not able to form any conclusion with respect to SA wanting contact with BA.

330 With respect to visits with her biological father DC and her Paternal Grandmother, Dr. LM reported that SA feels safe at these visits.

331 Dr. LM did acknowledge that it was somewhat unusual for a caseworker to have supervised the visits between SA and her Mother and Maternal Grandmother.

332 Dr. LM acknowledged in cross examination that she could not attribute the cause of SA's turbulent feelings. She further acknowledged that SA's feelings could be as a result of the visits being supervised by MC. Dr. LM stated, however, that SA was not pressured in her responses. Furthermore, SA's negative feelings suggest a broader set of experiences with her Mother. Dr. LM could not say whether these feelings were as a result of access visits being interrupted or terminated by the Director.

333 In Dr. LM's opinion, SA was telling her that she couldn't handle the pressure and turbulent feelings that the visits generated and that if access were to continue, these turbulent feelings would continue.

334 Dr. LM said that as SA matures and has a better understanding of her own feelings and history with her Mother, she may react differently with respect to her relationship with her Mother. As of the date of her assessment, Dr. LM concluded that SA did not want contact because of the emotional distress it caused her.

335 Dr. LM said that in many cases, children who are taken away from bad parents still remain loyal to them.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

In this case, Dr. LM did not detect such a loyalty.

336 Dr. LM was asked whether, as part of a broader assessment of SA in order to design a therapy program, it would help her to observe regular supervised access visits (supervised other than by MC) between SA and JA and PA. Dr. LM said that for her, such information would be useful because it would help her get to the source of SA's turbulent thoughts and feeling. For SA, however, Dr. LM said such visits would cause SA to have considerable stress because of her strong negative feelings about seeing JA generally.

337 When asked what would happen if SA was forced to see her Mother and PA, Dr. LM said that a forced visit would exacerbate her problems because of her inability to exercise control. Furthermore, continued access would impede SA's ability to move ahead therapeutically because "I think she needs to be able to sort out her feelings before she can move ahead therapeutically and she would not if continued access were granted." (page 591, lines 22 to 25, Volume II, February 26, 2002 transcript)

338 Furthermore, Dr. LM said that SA needs certainty of closure. It would not be in her best interests to have the issue of access to continue to hang over her.

339 Leaving access to PA and JA up to SA would be okay in Dr. LM's opinion because SA would have control over the situation. If SA were to ever want access, this would mean that she is ready to deal with her feelings. As of the date she saw SA, she was not ready for access.

340 Dr. LM agreed that SA was manipulative. The visit where toys were demanded as a prerequisite to the visit was an example of SA's manipulation. She stated that children in SA's situation often use manipulation as a means to try and control their lives and feel safer.

DR. PS

341 Dr. PS testified on February 26, 2002. He was recognized as an expert in clinical psychology.

342 Dr. PS said that he was contacted by MC in July of 2001 at the Court's request to do an assessment of both JA and BA. MC had advised him that the Maternal Grandparents and JA had filed separate applications for joint guardianship of SA.

343 Dr. PS said that he spoke to JA about setting up an appointment. JA told him that she would cooperate; however, Dr. PS said that she failed to attend the scheduled appointment.

344 Dr. PS said that he also spoke to BA. BA told him that he was waiting on instructions from his lawyer about attending the assessment. Dr. PS said that BA never contacted him again nor did he ever attend an appointment.

345 Dr. PS said that he had received correspondence from counsel for the Maternal Grandparents advising him that a case conference had been scheduled in order to determine what material had been provided to him by MC. This conference never occurred. MC had told him that their counsel was concerned that information MC had sent him would cause him to form a bias against JA and the Maternal Grandparents.

346 In response to a question regarding any biases he may have formed based on material sent to him by MC, Dr. PS said that he wouldn't have read the Information Consolidation until after he had seen JA and BA in order to keep an open mind. Furthermore, he hadn't read Dr. LM's assessment of JA done in March of 1998 as part of

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

the PGO hearing. As for any opinion MC had expressed on the Referral and Evaluation Request form sent to him, Dr. PS said that he ignores these opinions. Dr. PS stated that "...I go about things in such a way as to do my best to ensure that the clients who have been involved with Child Welfare aren't at a disadvantage from my position." (page 689, lines 6 to 9, Volume II, February 26, 2002 transcript)

347 I will also note here for the record that the Maternal Grandparents were also afforded an opportunity to select a psychologist of their choosing. They did not do so.

RR

348 RR testified on July 17, 2003. He was the caseworker who took over the file after the PGO Decision.

349 RR said that he interpreted the PGO Decision to mean that access was to be supervised and mandatory but that the number of visits was discretionary as determined by the Director.

350 On January 27, 1999, RR said that he met with JA, DC, and MN to discuss what needed to be done by JA for the PGO to be reconsidered. One of the requirements was for JA to attend for therapy. I note here that JA only attended one therapy session after the PGO.

351 He said that he temporarily terminated access from late January to April of 1999 in order to allow SA to stabilize in her foster placement with MD as recommended by EC. He also said that SA had requested a break from visits because she was upset that her Mother had assaulted DC in Court the day of the PGO decision. In his opinion, access was temporarily suspended, not terminated.

352 When asked how SA could have known of this assault, RR said that MD told SA about this. RR also acknowledged that the Director had concerns with MD giving information to SA about her Mother and the Maternal Grandparents, the effect of which would be to scare SA and discourage her from seeing them. RR said this concern was discussed with MD.

353 RR said that he transferred the file to SD on June 15, 1999.

Evidence Presented on Behalf of the Child

AG

354 AG testified on July 17, 2003. Her evidence was as follows.

355 AG said she took over as caseworker on SA's file December 19, 2002. She received the file from DM, the prior caseworker.

356 As of the date of her evidence in Court, AG said that she had met SA on three different occasions and corresponded with her via e-mail. AG said that none of SA's e-mails to her had requested a visit with either JA or PA.

357 At her latest meeting with SA on July 9, 2003 AG said that SA was happy, involved in her community, playing the clarinet, attending a youth chapel, and writing for pleasure. Further, SA's cerebral palsy was being well managed. Other than seeing a youth development worker at her school, SA was not attending for any counselling. AG said that she has not had any difficulty with SA since taking over her file.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

358 AG stated that SA has never approached her to seek access to JA or PA. Rather, AG said that she has approached SA on a number of occasions to ask SA if she wants access. AG said that SA understands that she can have access if she so chooses.

359 When asked about access at their July 9 meeting, AG said that SA was not interested and said that her Mother had anger control problems. Further, she didn't want to see PA.

360 AG said that on July 17, 2003 just prior to her testimony, she again contacted SA and asked her about access. AG said that SA was still not interested. When AG asked SA if she wanted to return home and live with her Mother, SA was not hesitant at all when she responded "no".

361 AG said that she has not done anything to influence SA's decision not to want to see her Mother or the Maternal Grandparents nor was she aware of anyone else that had. She stated that SA was still seeing her Paternal Grandmother although SA had been moved to another foster placement. When informed that RR knew that the Paternal Grandmother had been negatively influencing SA about seeing her Mother or Maternal Grandparents, AG said that she was very concerned.

362 AG believed that SA, now age twelve, was old enough to make decisions on access but it was unfair if she was being given negative information to sway her point of view.

363 AG acknowledged that MC was her supervisor and that MC had described the Mother and BA in a negative overtone to her. AG said that MC was complimentary of PA. AG said, however, that she has never heard MC say anything inappropriate about them.

364 AG said that if SA approached her at any time to request a visit, such request would be granted.

Analysis

365 Section 116 of the *CWAA* deals with transitional provisions between the *CWA* and the *CYFEA*.

366 Insofar as the issue of post-PGO access is concerned, sections 34(8), (9), (13) and (14) of the *CWA* are identical in both numbering and wording with the sections under the *CYFEA*. As such, with respect to the issue of post-PGO access, I do not need to address the issue of what effect the statutory amendments have had on the access rights of the Mother and Maternal Grandmother or on the access application of BA.

367 Insofar as the issue of joint guardianship is concerned, the matter is not clear. Section 116(1) of the *CWAA* contemplates the existence of a joint guardianship Order as at the time of the amendments to the *CWA* on November 1, 2004. It reads as follows:

116(1) Any joint guardianship that exists on the coming into force of section 39 of this Act continues to exist until it is terminated by a Court, and sections 36(4) and (5) and 37 of the Child Welfare Act continue to apply to the joint guardianship as if section 39 of this Act had not come into force.

368 Section 39 of the *CWAA* repeals section 36 of the *CWA* dealing with joint guardianship as well as section 37 dealing with a review of joint guardianship. The Maternal Grandparents filed their application for joint guardianship pursuant to the *CWA* as did JA. However, twenty-four days after this hearing concluded, the *CWAA* was proclaimed and no decision had yet been made with respect to whether the Maternal Grandparents and JA should be granted joint guardianship of SA along with the Director.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

369 The first issue, therefore, is whether I am now statutorily barred from being able to consider their respective applications for joint guardianship.

370 This issue was considered by my colleague, Judge Kvill, in *Alberta (Director of Child Welfare) v. K. (L.)*, 2005 ABPC 73 (Alta. Prov. Ct.).

371 Judge Kvill concluded that applications for joint guardianship filed with the Court prior to November 1, 2004 were not statutorily barred as a result of the CWAA. In essence, Judge Kvill held that by virtue of section 35 of *The Interpretation Act*, R.S.A. 2000, c. I-8, the right of applying for joint guardianship, which had accrued prior to the repealment of the joint guardianship provisions, survived. Judge Kvill held that the CWAA legislation was retrospective, not retroactive. Furthermore, child protection legislation has, as one its fundamental purposes, consideration of benefits to children.

372 I agree with the learned Judge's conclusions. I must therefore consider the provisions of the CWA dealing with joint guardianship.

373 With respect to post-PGO access, the relevant sections are as follows:

34(8) On making a permanent guardianship order or at any time during its term, the Court, on the application of a director, a former guardian of the child, the child if the child is 12 years of age or older or any other person with whom the child has a significant relationship, may make an order prescribing the access to be provided between the child and the former guardian or that other person.

34(9) No order under subsection (8) relating to a child **who is 12 years of age or older shall be made without the consent of the child.** (emphasis added)

34(13) If an order is made under subsection (8), a director, the child if the child is 12 years of age or older, or the person to whom access is provided in the order may apply to the Court for a review of the order.

34(14) On hearing an application under subsection (13), the Court may continue, vary, or terminate the original order.

374 In *Alberta (Director of Child Welfare) v. R. (M.)*, [2003] A.J. No. 1728 (Alta. Q.B.), Justice Hughes of the Alberta Court of Queen's Bench had an opportunity to comment on the interpretation of section 34(9) of the CWA. The learned Justice held that section 34(9) is a threshold issue. That is, absent the consent of a child who is over the age of twelve, a Judge of the Provincial Court of Alberta does not have the legal authority to order access.

375 In holding that this section is mandatory, Justice Hughes considered the meaning of section 2(d) of the CWA. It reads as follows:

2 A Court and all persons shall exercise any authority or make any decision relating to a child who is in need of protective services under this Act in the best interests of the child and in doing so shall consider the following as well as any other relevant matter:

(d) a child, if the child is capable of forming an opinion, is entitled to an opportunity to express that opinion on matters affecting the child and the child's opinion should be considered by those making decisions that affect the child.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

376 While the wording of section 2(d) in the *CWA* differs slightly in wording when compared to the same section in the *CYFEA*, it is my opinion that such difference does not affect the applicability of Justice Hughes' decision to this case.

377 While noting that section 2 is not defined in terms of age, Justice Hughes stated that section 34(9) does have an age limit and that section 34(9) supercedes the principles set out in section 2 of the *CWA* when it come to a determination of whether or not access can be ordered. I agree with the interpretation of the learned Justice. I am also bound to follow her decision as a matter of law.

378 Justice Hughes then went on to canvas the issue of whether evidence is required concerning consent or the lack thereof. Clearly, that is not an issue in this hearing. Not only do we have the evidence of numerous individuals involved with the Child, we also have the evidence of the Child herself.

379 When this hearing was commenced in September of 1999 by the filing of an application by the Director to terminate access, SA was almost eight and one-half years of age. By the time this hearing ended in October of 2004, SA was almost thirteen and one-half years of age.

380 SA has not consented to seeing either her Mother or the Maternal Grandparents. Absent this consent, I am statutorily prohibited from considering their request to see SA. I therefore reject the argument submitted by counsel for both the Mother and Maternal Grandparents that I have the ability to order access without SA's consent.

381 Counsel for the Maternal Grandparents submits, in the alternative, that when the application before the Court is for a review of the original access Order pursuant to section 34(13) of the *CWA*, then the age requirement in section 34(9) does not apply. That is, the age restriction in section 34(9) refers only to section 34(8) and the granting of an initial access Order and does not apply to a review of that Order pursuant to section 34 (13). Counsel then suggests that given the evidence of misconduct on the part of some of the professionals who worked with SA, I should vary the original Order and grant specified access up to and including access twenty-four hours per day on a full time basis. That is, the Director alienated SA from her family and she should *de facto* be returned to them via such an access Order.

382 With respect, I do not agree. In my opinion, the age restriction in section 34(9) is a threshold issue whether the application before the Court is for an initial access Order or a later review of that Order. I cannot see the logic in being obligated to follow a child's wishes on an initial Order because of a threshold issue and then ignoring the child's wishes on a later review of that same Order which would be the result if I read the section in as literal a manner as suggested.

383 Even if I am wrong in my conclusion, section 2(d) of the *CWA* would still obligate me to consider SA's wishes with respect to access. Those wishes have been made quite clear.

384 Counsel for the Maternal Grandparents provided me with the decision of Justice Greckol in *T. (B.L.) v. T. (R.J.)*, 2003 CarswellAlta 129 (Alta. Q.B.). This is a custody case in which the learned Justice set forth the factors to be considered in determining the best interests of the child as were enumerated upon earlier by Justice Picard in *Starko v. Starko* (1990), 106 A.R. 62 (Alta. Q.B.). One of those factors is the opportunity for a child to get to know her family and to be loved by them.

385 Justice Greckol also commented upon the relevancy of a child's views and wishes. In that case, the learned

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

Justice held that the child's wishes were narrowly based and could not be respected.

386 With respect, this decision does not apply to the issue in this hearing. Justice Hughes' decision is directly on point and binding on this Court. Justice Greckol's decision deals with a custodial dispute. Although the best interests of the child will always be the key factor to consider in both child welfare and custodial disputes, it is the *CWA* and now the *CYFEA* that must be followed in child welfare disputes. There is a statutory threshold with respect to post-PGO access, and I cannot ignore this legislative provision which allows a child over the age of 12 to determine whether or not access will occur.

387 As for the provisions in the *CWA* dealing with joint guardianship, the relevant sections are as follows:

36(1) If a child is the subject of a permanent guardianship agreement or order, any adult may make an application in the prescribed form to the Court to be appointed as guardian of the child jointly with the director.

36(3) The Court may make an order appointing a person as a guardian of a child jointly with the director if it is satisfied that

(c) **the child has consented, if the child is 12 years of age or older**, (emphasis added)

(e) the appointment of that person as a joint guardian will be beneficial to the child.

36(5) If the Court makes an order appointing a joint guardian, it may, on the application of the director or the joint guardian and on being satisfied that the director and the joint guardian have been unable to negotiate an agreement or have not complied with the terms of an agreement, make an order prescribing

(a) the access that will be provided between the joint guardian and the child, and

(b) the conditions under which the director shall consult with the joint guardian on matters affecting the child.

388 In my opinion, the rationale of Justice Hughes in the *M.R.* case cited *supra* applies to the joint guardianship provisions as well. It is clear that SA has not given any consent to the Maternal Grandparents' application or her Mother's application for joint guardianship. Absent this consent, I am statutorily prohibited from granting this Order. It also follows from a reading of section 36 that I cannot even consider the issue of access as contemplated in section 36(5)(a) between SA and the Maternal Grandparents, or SA and her Mother, until a joint guardianship Order has been made.

389 Having come to the aforementioned conclusions, I do not need to address the argument of counsel for the Maternal Grandparents that I should consider dividing up the duties of raising SA pursuant to a joint guardianship Order between the Director and the Maternal Grandparents as contemplated by section 36(5)(b) of the *CWA* in order to address what they perceived to be inadequate care and attention being paid to SA's suicidal threats.

390 As for the argument that I should exercise my statutory authority under section 27 of the *CWA*, terminate the PGO pursuant to section 35 of the *CWA*, and return SA to her Mother, I note the following.

391 Sections 27 and 35, both of which are in Part 3 of the *CWA*, read as follows:

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

27 After a hearing under this Part, **the Court may make any order it has jurisdiction to make** under this Part or Part 4 if it is satisfied as to the appropriateness of that order notwithstanding that it is not the order applied for by a director or a guardian of the child. (emphasis added)

35(1) If a child is the subject of a permanent guardianship agreement or order, the director, if the director is satisfied that the child should be returned to the guardianship of the person who was the guardian of the child before the agreement or order was made, may apply to the Court for an order terminating the permanent guardianship agreement or order.

392 In my opinion, I may only terminate a PGO order if the Director applies to this Court with such a request. That is, in considering the general powers granted to this Court pursuant to section 27 of the CWA, I am still not in a position to terminate the PGO unless and until the Director places such an application before me. Such has not been done. Therefore, I have concluded that I do not possess the statutory authority to terminate the PGO because the requirements of section 35, being specific in nature, have not been complied with.

393 The wording in section 35(1) of the *CYFEA* is identical to the wording of section 35(1) of the *CWA*. Although there is a slight variation in the wording of section 27 in the *CYFEA* as compared to section 27 in the *CWA*, I have concluded that such difference does not affect my conclusion above.

394 Even if I am wrong in coming to the conclusion that I do not possess a residual right to terminate the PGO pursuant to section 27 in a post PGO access hearing, it is my opinion that it would still be inappropriate to do so in this case. While the evidence clearly indicates some poor judgment on the part of some of the professionals, I must not forget that the overriding theme in child welfare legislation is the protection of children such as SA and the taking of such action as would result in SA's best interests being looked after.

395 Had I the authority to consider granting the joint guardianship Order, I would not have done so given the lack of cooperation and animosity that has continually existed between the Maternal Grandparents and JA on the one hand and the Director on the other. Section 36(3)(e) of the *CWA* requires that the appointment of a person as joint guardian be beneficial to the child. I cannot see how SA could possibly benefit from the constant feuding that I am convinced would occur had I the ability to grant a joint guardianship Order in this matter.

396 Had I the authority to vary the post PGO access order pursuant to section 34(14), I would not have done so given the evidence I heard at this hearing. As stated earlier, section 2(d) requires that I consider SA's wishes. Above all, however, I would have to consider what would be in SA's best interest.

397 The aforementioned conclusions that I reached in paragraphs 394, 395, and 396 above require that I briefly analyse the evidence in order to determine:

- (a) whether SA's refusal to consent to access has been unduly influenced by the Director's representatives;
- (b) where do SA's best interests lay; and
- (c) the degree of animosity between the Director on the one hand and JA and the Maternal Grandparents on the other hand.

398 As to the first query, there is clear evidence that at times, SA had been inappropriately influenced. Both MD and DC had been making inappropriate comments to SA. RR confirmed this in his evidence. There was also the allegation that MD had hit SA on her head. That the Director knew about this and failed to remove SA much

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

sooner from MD's care is troublesome.

399 I do not accept the proposition that either EC or MC deliberately sabotaged access visits.

400 Despite the discrepancy in some of EC's notes, I am not of the opinion that she acted other than in a professional manner and with SA's best interests in mind. I accept her position that SA requires closure in order to move on with her life. This view was also taken by Dr. LM who went further and added that before SA can move on therapeutically, she needs to sort out her feelings through having closure.

401 I do not accept the proposition that MC deliberately manipulated EC in the latter's advice to this Court. That she ignored an access Court order I issued in January of 2000 for a period of time is reprehensible from a professional such as EC.

402 As for MC, she was but one of a long line of caseworkers and visit supervisors who experienced much difficulty in dealing with both JA and the Maternal Grandparents. This is not a surprise, especially given that both BA and PA still take the position that SA should have never been taken into care.

403 I do concede, however, that MC should have removed herself from supervising visits when the level of antagonism was such that one could almost expect an incident to occur at every visit that she attended. For example, MC's decision to terminate the July 28, 2000 visit at the swimming pool appears rather arbitrary given that the visit was going very well. Furthermore, MC should not have been threatening to cancel visits when she had no legal authority to do so. This too is reprehensible from a professional such as MC.

404 MC's behaviour at the swimming pool does not, however, justify JA's response to MC's decision. I accept that JA was frustrated but I prefer the evidence of MC, EC, and SA as to what happened in the pool and in the change room after. Dr. LM's conclusions with respect to JA's behaviour as mentioned in her report at the PGO hearing and as discussed at this hearing when she was cross examined lend credence to the view that JA had the potential to be a highly volatile individual.

405 I have always found SA to be a bright and articulate person who has not had any difficulty in expressing her position. That she is tired of therapy and assessments is hardly surprising. Despite my conviction in this regard, I still requested that Dr. LM assess SA.

406 Dr. LM also came to the conclusion that SA's wishes were clear and unbiased. SA told her that she wanted no further contact with JA and the Maternal Grandparents. I do not accept the argument that Dr. LM's opinion was contaminated because of the information she received from MC.

407 I acknowledge that SA's acting out behaviours could not solely be attributable to access visits with JA or PA. There were clearly other incidents which happened that caused her emotional distress, including at times, missing her Mother. I agree that when one looks at a snapshot in time of SA's behaviour (ie. from January to April of 1999), one could not conclude from EC's notes that such visits caused SA to act out. I do, however, agree with EC's assertion that the intensity and extent of SA's defiant behaviour, can and is related to any negative occurrences that happened at access visits with either JA or PA.

408 As pointed out by Dr. LM, SA has serious emotional difficulties and negative and turbulent feelings about her Mother at her core. G's comments at this hearing regarding safety precautions SA took on some of the access visits substantiates SA's feelings.

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

409 I also acknowledge that when visits went well, SA was thrilled. The photographs that I saw prove this to be the case. I accept that at times, SA looked forward to visits. I accept that at times, SA expressed a desire to return to her Mother at some of these access visits.

410 What the Maternal Grandparents fail to understand to this very day is that despite their love and concern for SA, PA's and JA's behaviour at times at access visits and the entire family's antagonistic attitude towards caseworkers and visit supervisors could only have had the effect of further alienating SA from them.

411 I accept that both JA and PA made inappropriate comments at times to SA. Asking SA where she lived, telling her to come home and ignore Court orders, telling her she couldn't be a sister to M if she didn't return home, and attempting to bribe her were inappropriate. These statements had the anticipated effect of heightening SA's stress to the point where she felt overwhelmed.

412 EC's use of an equilibrium model (paragraphs 73 and 74) to describe whether access should occur is most helpful.

413 I have therefore concluded that it would not be in SA's best interest to have her further analysed or to order her to attend one final visit (as requested by JA) or a number of visits (as requested by the Maternal Grandparents) in order to find out if SA's position on access had been externally biased. I am not prepared to turn SA into a guinea pig in order to test out a theory which I do not believe to be correct. Both EC and Dr. LM support this conclusion.

414 I commend JA on having demonstrated stability in her new life. Had she conducted herself with the degree of propriety at access visits that I expected, then the possibility I outlined in paragraph 244 of the PGO decision might have come to fruition.

415 JA was certainly more honest and forthright in her testimony than either BA or PA. I do not, however, accept her evidence in its entirety with respect to the number and degree of inappropriate comments that she made to SA at access visits nor do I accept her version of her interactions with MC in its entirety.

416 I am of the opinion that but for the Maternal Grandparents' undue influence over her, and but for MD and DC's negative comments to SA, JA might have had a more than reasonable chance of having SA returned to her care.

417 As for BA and PA, neither can or will be able to change. Their claim to a moral superiority, based on their bastardized view of the Bible, is both pitiful and highly destructive.

418 JA's behaviour as a teenager and her subsequent relationship with DC and its effect on SA was founded on the sexual abuse she suffered at the hands of her father and in the dysfunctional home environment in which she grew up. The suggestion that the Maternal Grandparents' drinking at pubs was the sole cause of JA's problems is absurd.

419 That the Maternal Grandparents cannot understand why SA went into care is frightening. That they initially sent SA to Ontario (see the PGO decision) to avoid apprehension, and later hid her in their basement and kept her out of school to avoid apprehension is reprehensible.

420 As for the joint guardianship applications, the evidence speaks for itself. Second guessing doctors on the appropriateness of dexedrine for SA's ADD, criticizing SA's therapy, their chronic demands for information on

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

SA that they were not legally entitled to, hostility on site changes for visits — how could I ever contemplate making them joint guardians?

421 When I instructed the Director to retain Dr. PS to assess JA and the Maternal Grandparents with respect to their joint guardianship applications, they failed to attend. BA alleged that Dr. PS was biased because he too had received his instructions from MC.

422 Most prophetic was Mr. Van Harten's comments at the July 18, 2001 hearing date when I considered the request for an assessment of the Maternal Grandparents as a result of their application for joint guardianship of SA. He stated that these proceedings might not finish until SA was age twelve or thirteen, by which time, the issue of access would be moot. That is, my options would be limited to terminating access, or granting access at SA's request. He was also prophetic in his remarks that SA could not be forced to attend a visit if she doesn't want to go.

423 I conclude this part of the analysis by stating that while it is clear that SA does not appear to want access at the present time, it is not so clear whether her current view is encased in cement. Despite what has gone on in the past, I encourage SA to remember the good times, especially now that she is a young lady of fourteen. She still has three people who love her dearly. I remind also that as she matures further and has a better understanding of her own feelings and history with her Mother, she may react differently to access visits.

424 As for the case of *B. (K.L.) v. British Columbia*, 2003 SCC 51 (S.C.C.) provided to me by counsel for the Maternal Grandparents, it is my opinion that it has no applicability to this hearing. That case dealt with a claim for damages for breach of fiduciary duty and vicarious liability with respect to children placed in foster care. At no time whatsoever was a claim for damages made. Furthermore, this Court does not have the jurisdiction to entertain such a claim.

425 If the Maternal Grandparents believe they have such a claim, it should be pursued in the proper forum. I cannot accept the suggestion that I should ignore specific statutory provisions because of any allegation of breach of fiduciary duty or vicarious liability.

Conclusion

426 When a statute contains a threshold prerequisite such as is found in sections 34(9) and 36(3) of the CWA, it is at the time of the granting of an Order that a Judge must determine the age of the child and whether the prior consent of the child is required by virtue of the statutory age provision. In my opinion, the time of the filing for an initial access Order, a review of a previous access Order or the filing of a joint guardianship application is not the appropriate date to determine whether a child has a statutory right of approval.

427 The Maternal Grandparents application for joint guardianship of SA is dismissed. JA's application for joint guardianship is dismissed. SA has not consented to either of their applications which is a statutory threshold prerequisite.

428 BA's application for access to SA is dismissed. SA has not consented to access with BA which is a statutory threshold prerequisite prior to any Order issuing from this Court.

429 I decline to grant the Order as requested by the Director terminating access entirely to SA by either JA or PA. My refusal to grant such an Order is based on the poor judgment exercised at times by some of the Direct-

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

or's witnesses who were involved in SA's life subsequent to the PGO. Such refusal will also provide for a mechanism to allow SA to see JA and/or PA if SA so chooses.

430 I refuse, however, to grant any Order which recognizes that either PA or JA are entitled to specified access visits. SA has not given her consent to any visits with either of them which is a statutory threshold prerequisite.

431 Even if I am wrong in my conclusion that the age requirement in section 34(9) also applies to reviews of access Orders under section 34(13), it is my opinion that SA's current wishes in this matter have been made abundantly clear for a considerable period of time and must be respected. I do not accept the proposal that SA be placed into her Mother's care pursuant to an access Order twenty-four hours per day or for a reasonable, generous, or specified period of time. Such a proposal clearly runs contrary to SA's wishes.

432 I decline the request to exercise my authority pursuant to section 27 of the CWA and terminate the PGO as I have concluded that I do not have the statutory authority to do so in this case.

433 Even if I am wrong in this conclusion and I do possess such power, my analysis of the evidence has led me to conclude that to do so in this case would not be in SA's best interest.

434 I have concluded that it would be ludicrous to presume that SA has been alienated from her Mother and Maternal Grandparents solely as a result of the actions at times of some of the professionals involved in SA's life. I have also concluded that it would be ludicrous to presume that these same professionals acted in such a fashion at times so as to have sabotaged the possibility of SA ever reuniting with her Mother and Maternal Grandparents. The refusal of the Maternal Grandparents to even acknowledge any wrongdoing on their part or on JA's part since before SA was apprehended, and their questionable behaviour, along with the questionable behaviour of JA, subsequent to the PGO, would have made this case easy to decide had it not been for the poor judgment demonstrated at times by some of the Director's professionals.

435 Having said this, however, I recognize that some injustice has been done. It is my opinion, though, that I cannot rectify the errors of the Director on the back of this Child.

436 I accept without question that JA and the Maternal Grandparents want SA back as part of their family. It is also quite apparent that SA is now a bright fourteen year old teenager who is old enough to "vote with her feet" when it comes to making a decision on access.

437 I harken back to what SA told EC at one of her therapy sessions-maybe when she was fourteen or fifteen and big enough to protect herself, she wouldn't mind seeing her family.

438 So as there is no ambiguity in what I am now contemplating, *I want to remind SA that she alone will make the decision as to whether or not she wishes to see either JA or PA and if so, on what terms and conditions including the need for supervision. Furthermore, the Director shall not be able to prevent visits from occurring if SA decides to exercise her right to a visit. The Director shall retain a therapist for SA to assist her in deciding whether to have a visit, if requested by SA, and to help her deal with any issues arising from any visit.* (emphasis added).

439 I would ask SA to at least seriously consider the request for access by her Mother and Maternal Grandmother, recognizing that mistakes have been made. I would point out to SA that in my opinion, her Mother loves her and has changed for the better. I would also point out to SA that her Maternal Grandparents love her, despite

2005 CarswellAlta 1716, 2005 ABPC 141, [2006] A.W.L.D. 405, [2006] A.W.L.D. 406, [2006] W.D.F.L. 277, [2006] W.D.F.L. 279

their extremely annoying unctuous like behaviour of laying claim to infallibility and moral superiority by virtue of their religious beliefs.

440 If SA's answer is no to any access, so be it. That is the end of the matter.

441 If SA's answer is yes, I would again remind JA and PA, as I did in the PGO Decision, that this is an opportunity that they should not let slip through their hands. So as there is no ambiguity in what I mean, their conduct along with the conduct of BA post-PGO was questionable and hardly conducive to building a relationship with SA built on trust. If visits do occur and the Director receives any feedback which indicates an attempt by either JA or PA to sabotage SA's placement or to cause her to feel uncomfortable and unsafe, I will forthwith grant upon request, the Director's application to terminate their access. It would be almost redundant to state that such behaviour by either of them would naturally lead SA to conclude that she was right in her decision to have nothing further to do with them.

442 If SA still resides outside of Alberta in her current foster home and desires a first visit with either or both of JA or PA, I would expect that the Director will cover the cost of bringing SA to Calgary. Thereafter, and if SA still wants ongoing access, I expect that the Director will continue to cover the cost of bringing SA to Calgary or alternatively, and as stated in Court by counsel for the Director, consider the option of relocating SA back to Calgary.

Applications dismissed.

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