

AFFIDAVIT

In the Provincial Court of British Columbia
Under the *Child, Family and Community Service Act*

Court File Number: **12792**
Court Location: **Salmon Arm**

IN THE MATTER OF THE CHILD:

Name:

PAUL THOMAS NEWTON

Date of Birth:

November 02, 2009

I, **Rhonda Bailey**, Occupation **social worker**
of **the Ministry of Children and Family Development, for Salmon Arm, British Columbia**

MAKE OATH AND SAY AS FOLLOWS:

1. I am a social worker with the *Ministry of Children and Family Development* ("the Ministry") in Salmon Arm, British Columbia, and as such have personal knowledge of the matters hereinafter deposed to save where stated to be upon information and belief in which case I verily believe them to be true.
2. I make this my Affidavit in response to the Affidavit of Magdalena Asbjornhus sworn November 09, 2010.
3. In response to paragraphs 10 through 14 of the said Affidavit, Brent Asbjornhus has advised me that he was the primary caregiver of Maxwell for the entire time he and Magdalena were together. He further advised me that when Magdalena gave birth to Maxwell she asked him if Maxwell was going to live with his parents and whether they were going to care for him. He told me that he explained to Magdalena that he and Magdalena were the parents and that it was their job to raise Maxwell.
4. In response to paragraph 16, the information that I have received is that school personnel began to notice a decline in Magdalena's mental health long before she complained to Maxwell's teacher about the pain in her eye. Maxwell was absent from school for a significant number of days at the beginning of grade one despite the fact that the school was a quarter of a block from the child's home. On occasion Magdalena would forget to pick up Maxwell from school and the school would have to phone Brent to come and pick him up. Additionally, Maxwell would sometimes come to school without any food and he would also at times be wearing inappropriate clothing.
5. In further response to paragraph 16, shortly after Magdalena was admitted to the psychiatric ward Maxwell stated to the social worker that "My Mommy does bad things to me and my Dad". The examples he gave were that Magdalena would say to him that she would kill him and cut his eyes out. He also disclosed that Magdalena burnt the food that she cooked and he indicated that he had been force fed burnt food. He further stated that "My Mom throws knives, spoons, and forks at my head" and when she did that he ducked down. He further indicated that on one occasion Magdalena threw a knife at him and it stuck in the wall behind his head. According to Tracey Smillie, the social worker at Foothills Psychiatric Hospital Magdalena was admitted to the psychiatric ward for having an untreated mental illness of many years.
6. In response to paragraph 17, file information received from Alberta Children's Services indicates that after her release from the psychiatric ward Magdalena agreed to accept support services but that she was ultimately unable or unwilling to follow through with those services.
7. In further response to paragraph 17 and in response to paragraph 19, after Magdalena returned home she was not permitted to look after Maxwell because of recommendations made to Brent by Alberta Children's Services. As a result, Brent hired a caregiver to care for Maxwell when he was unable to directly do so and, additionally, Maxwell attended a before and after school care program.
8. In response to paragraph 18, the issues Maxwell began to have at school were likely as a result of Magdalena's previous abusive conduct toward him.
9. In response to paragraph 20, on page three of the report of Dr. Marcus it is stated that

Magdalena was responding to auditory hallucinations, her speech was disjointed and disorganized, and that her insight, judgment, impulse control, and reliability were considered to be poor. The report goes on to state that she acknowledged hearing voices and saw this as strange and weird. Finally, the report states that Magdalena's prognosis was guarded and that assessment would be ongoing.

10. In response to paragraph 22, Maxwell's statements as to having knives thrown at him by Magdalena are outlined above.
11. In response to paragraph 24, the email from Dr. Aponowicz dated August 19, 2010 states that he saw Magdalena for a few sessions of psychological counselling.
12. In response to paragraph 28, it is my understanding that the mental health professionals seen by Magdalena in Poland did not contact any parties in Canada to obtain collateral information about her and as a result they would not have had all the information they needed to make a complete assessment.
13. In response to paragraph 43, the email attached as Exhibit "F" indicates that Magdalena was made aware of the Polish interpreting service available to her and she could have accessed it at any time if she had chosen to do so.
14. In response to paragraph 44, what I did discuss with Magdalena were the previous reports which had been done indicating that she had mental health issues and had not followed through with medications or treatment plans. In doing so, I wished to obtain Magdalena's viewpoint on these matters. I was also attempting to determine the reason for the discrepancy between what the reports were saying and what she was saying, which was that people were out to get her, that she was being victimized, that people had secret plans to prostitute and sell her and that people were trying to steal from her. I do not believe that I told Magdalena on any occasion that she was lying to us. My purpose in speaking with her was to attempt to determine the nature of Magdalena's mental issues and formulate a plan for Paul's care.
15. In response to paragraph 47, Magdalena was not advised that Paul was going to be removed at birth because she was deemed to be a flight risk. In response to Magdalena's statement that she was not allowed to hold Paul, the fact is that the doctor laid Paul on Magdalena's stomach and she refused to hold him.
16. In response to paragraph 48, it is untrue to suggest that no mental health examination of Magdalena was ever suggested to her. I met with her in September, 2009 and gave her the telephone number of Adult Mental Health and asked her to make an appointment for a complete psychological assessment. She subsequently met with David Parmenter, a clinician with Mental Health and Addiction Services in Salmon Arm, British Columbia.
17. In response to paragraph 51, as previously indicated, after Paul was born the doctor laid him on Magdalena's stomach and she refused to hold him.
18. In response to paragraphs 52 and 53, I do not believe that a doctor would have told Magdalena that she had to stay in the hospital because she was homeless. It is evident that things began to unravel for Magdalena while she was in the hospital and as a result it was the opinion of the medical professionals that she needed to be taken to the psychiatric ward of Vernon Hospital. In regard to the possibility of Magdalena receiving a needle from a male nurse, from my understanding restraints such as this would only be utilized when a non-compliant patient is exhibiting some kind of severe psychotic behavior.
19. In response to paragraph 58, in my view a psychiatric unit at a hospital is not a particularly safe place for an infant. In spite of this I did take Paul to see Magdalena on that unit on two occasions. On those visits I placed Paul in Magdalena's hands and asked her if she would like to hold him. She did not know how to hold him and his head was flopping all over the place. I then showed Magdalena how to hold Paul's head so that he would not be injured. She held the child for a maximum of ten seconds and then passed him back to me. Additionally, on one of the visits we had brought formula in a bottle for Paul and Magdalena did not know how to feed him the bottle.

20. In response to paragraph 59, during a telephone call I had with Magdalena's mother while she was in Poland she told me that Magdalena had told her that while in hospital she was chained to the bed, starved, and drugged. Magdalena's mother indicated to me that she was worried and concerned about that.
21. In response to paragraph 64, at the meeting on June 21, 2010 Magdalena told me that she was living in a crack house and she described the people she was living with as having flesh eating disease because they had open sores on their skin. I advised Magdalena that she was living in a dangerous situation and asked her if there were drugs in the house. She responded that there were. I then advised her that the reason that she did not have Paul living with her is because she would have taken him to the house and placed him in a situation where he would have been at risk. Magdalena's friend, Starr-Ella was aware of Magdalena's living situation and did not assist Magdalena in leaving it until after I told Magdalena that she needed to move out. I advised Magdalena to go to the Women's Shelter in Vernon. She was apparently unable to get into the Women's Shelter because she did not satisfy the requirements and she therefore moved in with Starr-Ella.
22. In further response to paragraph 64, what I did tell Magdalena was that the report from the hospital stated that she had a mental illness that they couldn't diagnose. I did not say that she would never get better, but that she needed to engage with mental health services in order to get better. I did not say that she would never have her son but did advise her that we would be proceeding with our application for a continuing custody Order.
23. In response to paragraph 68, Magdalena has never asked to have Starr-Ella attend at an access visit. On a few occasions Starr-Ella has asked to attend. The reason I have not agreed to Starr-Ella attending at the visits is that the visits are intended to be a time of interaction between parent and child and having a third party there would detract from the positive engagement which is supposed to take place.
24. In further response to paragraph 68, at one point Magdalena requested that there be no questions put to her by the social workers and that there be no further communication at the visits. This was complied with and we stopped asking her anything. I agreed to this request the first time Magdalena made it. Since then Magdalena has attempted to engage with the social workers and we have had to redirect her back to Paul.
25. In response to paragraph 69, the fact is that Magdalena does not know how to relate to the child at the visits. On one occasion Paul was hitting his head against the wall and Magdalena stated to him "What's wrong with you - are you mad?" On another occasion Magdalena brought Paul some bubbles and he put the bubble wand in his mouth. We had to intervene and take the wand from him. Another time Paul put a plastic picnic fork in his mouth and we had to intervene. Magdalena does not talk with the child at the visits in any meaningful way; rather she talks at him. She never sits in front of him and faces him. She sits behind him and constantly natters at him with her statements not making a great deal of sense. She never tries to pick Paul up. On one occasion he crawled to her and as he attempted to approach her she pushed him away. It is not certain that Paul even recognizes who she is.
26. In response to paragraphs 70 and 71, as previously stated once Magdalena asked me not to question her anymore I stopped doing so. As a result of her complaints Ministry workers no longer supervise the visits and the We-Care agency from Vernon, B.C. has taken over the supervision of the visits.
27. In further response to paragraph 70, when I did attend at the visits my questioning of Magdalena was never continuous. My questions were generally along the lines of asking her to call me if she needed to communicate with me.
28. In further response to paragraph 70, I do not believe that I have ever told Magdalena that she lies to me. I have attempted to discuss with her the reasons for the differences between what the reports say about her and what she says was happening to her. In respect to her statement that I have said to her that she is mentally ill and that she can never get better, the fact is that I did not say that to her. What I did say was that she needed to engage with mental health services in order to get better. I do agree that I have stated to Magdalena that some of the things she has told me are not true. This is because some of the statements she has made are clearly contradictory to what is stated in the psychological reports.

- 29. In response to paragraph 73(d), it would have been impossible for me to have a conversation with Starr-Ella while Magdalena was visiting Paul because I would not have left Paul alone with Magdalena during the visit. I have never had a conversation with Starr-Ella about Magdalena at any access visit.
- 30. In response to paragraph 73(f) the access supervision at that time was done by two workers from a rotating combination of three workers. On the day in question all three workers were away and it would have been too difficult to introduce new workers as supervisors on short notice. The result was that there was no alternative but to cancel the visit.
- 31. In response to paragraph 73(g) it was not possible to make up the previously missed visit due to the schedule of the foster parents and the lack of an available room at which the visit could take place.
- 32. In response to paragraph 74 Magdalena received a visit with Paul two days after his birthday.
- 33. In response to paragraph 75, communication by email is not an option due to confidentiality issues and the possibility of the words contained in emails being manipulated to provide a meaning to the words which the writer of the email may not have intended. Given Magdalena's concerns about not wishing to respond to direct questions from me I instructed my counsel to advise Magdalena through her counsel that I would be prepared to communicate with her by regular mail or fax. Attached hereto as exhibit "A" is a copy of a letter forwarded by my lawyer to counsel for Magdalena dated November 25, 2010 in this regard.
- 34. In response to paragraph 76, arrangements have been made for Dr. Lea, child psychologist to attend at the December 16, 2010 access visit for the purpose of seeing Magdalena and Paul together in preparation for the evaluation being done on Magdalena by Dr. Lea.
- 35. In response to paragraph 79, in response to Magdalena's complaints about me questioning her at access visits, the visits are now being supervised by the We-Care agency of Vernon, B.C. The cost of hiring that agency is being paid for by the Ministry.
- 36. In response to paragraph 80, in view of the fact that the visits are now being supervised by a paid agency there is no reason for Starr-Ella to be allowed to attend at the visits as a support person.
- 37. Magdalena has brought inappropriate items for Paul to the access visits on occasion. At Thanksgiving she brought a frozen turkey for the child. On another occasion she brought a can of baby food and the lid on the top of the can had not been sealed properly. Another time she brought a footlong chocolate bar for Paul.

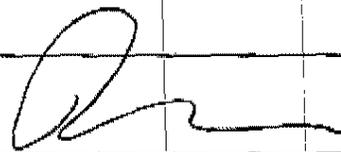
Sworn before me

on December 3 2010

at Salmon Arm, British Columbia



DAVID M. ROSS
A Commissioner for Taking Affidavits for British Columbia



Rhonda Bailey

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Our File: 2018

Your File:

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FAX TRANSMITTAL INFORMATION			
FROM:	David M. Ross	TO:	Clayton A. Miller
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Thursday, November 25, 2010

CLAYTON A. MILLER LAW CORP.
#1 – 1873 Spall Road
Kelowna, British Columbia
V1Y 4R2

Attention: Clayton A. Miller

FAXED
@ 4:00 PM
DR

Dear Mr. Miller:

Re: In the Matter of the Child: Paul Thomas NEWTON Court File # 12792

Further to your letter dated November 19, 2010, our instructions are that the Director is not agreeable to the child attending at Dr. Lea's office in Kelowna. However, Dr. Lea is welcome to participate in either or both of the access visits scheduled for December 2nd and December 16th. Our instructions are that our client would be willing to extend each of those visits to one hour in length.

In respect to the issue of communication between the social worker and your client, we suggest that such communication could take place by regular mail. Additionally, communication could be by facsimile transmission if the director received confirmation to its satisfaction that your client would be receiving faxes on a confidential basis. In addition, the social worker would be willing to send faxes to Ms. Asbjornhus care of your office if that would be of assistance to her.

We trust that this meets with your satisfaction.

Yours truly,

SIVERTZ KIEHLBAUCH

David M. Ross

DMR:rtr

Cc: MCFD

This is Exhibit "A" Referred to in the
Affidavit of Rhonda Bailey
sworn before me at Salmon Arm
this 3rd day of December 2010

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