

**IN THE SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)**

Citation: *Saunders v. Saunders*, 2005 NSSF 10

Date: 20050208

Docket: 1201-57039

Registry: Halifax

Between:

Thomas George Saunders

v.

Petitioner

Deborah Ann Saunders (now Bilquist)

Respondent (Applicant)

Judge: The Honourable Justice Leslie J. Dellapinna

Heard: January 13 and 14, 2005, in Halifax, Nova Scotia

Counsel: Thomas Singleton and Heather MacDonald, for the Petitioner
Colleen Scheuer, for the Respondent (Applicant)

By the Court:

[1] This is an application by Deborah Bilquist pursuant to subsection 17(1)(b) of the *Divorce Act* to vary the custody provisions of the Corollary Relief Judgment herein. Specifically, Ms. Bilquist seeks primary care of the parties' son so that she can relocate with him from Halifax to Dubai in the United Arab Emirates where her husband, Kevin Bilquist, is now residing.

BACKGROUND

[2] Ms. Bilquist and Mr. Saunders were married in Goose Bay, Newfoundland and Labrador on July 4, 1992. Their son, Joshua David Saunders, was born on [...], 1994. Prior to the parties' separation on October 1, 2000 they relocated from Goose Bay to St. John's, then to Halifax, Nova Scotia and then to Tantallon, Halifax County.

[3] After the parties' separation Ms. Bilquist moved to Clayton Park in Halifax. At that time Joshua was in grade two. It was approximately then that Ms. Bilquist met Kevin Bilquist and moved to Fall River, Halifax County. In June of 2003, Mr. Saunders and his fiancé, Kelly Flinn, moved to the same area so that he could be near Joshua.

[4] In April, 2003 the parties signed Minutes of Settlement which agreement addressed the various issues arising from their separation. Among other things that Agreement included the following provisions with respect to the care of Joshua:

The Husband and Wife agree that the shared custody, supervision, care and control of the Child shall be held jointly by the Husband and Wife with the Wife and Husband making every attempt to maintain the equal sharing of the care and control of the child. The parents agree to be reasonable and liberal in accommodating any desires of the other parent for visitation with the Child, or any express wishes of the Child to visit with the said parents.

As close as possible before the beginning of the following month both parents shall e-mail, phone, or meet in person to negotiate that month's schedule for the parenting of the child.

Each parent when the child is cohabiting with them shall allow the other parent at least one daily phone call as to see [sic] how the child's day was and to allow for that parent to be aware of everyday activities on extended stays with either parent. Such phone conversation shall take place before 8pm as [sic] not to disturb preparing for bedtime. Each party shall have the right to make reasonable telephone calls to the Child, and vice versa, at reasonable times when the Child is with the other party, this shall be kept to a reasonable amount, preferably the above mentioned call and any calls that may affect the

social and everyday development of the child. Each party shall keep the other informed of current phone numbers where the Child may be reached.

Neither party shall remove [sic] the residence or the domicile of the Child without the prior written consent of the other party.

Each set of grandparents of the Child will be granted access to the child with reasonable time frames and allowed to have the child travel to their home within the constraints of the Child's school year.

Each party agrees that if either of them has any knowledge of any illness, accident or other circumstances seriously affecting the health or general welfare of the Child, he or she promptly shall notify the other of such circumstances. Each party shall be entitled to complete, detailed information from any doctor, psychologist, psychiatrist, consultant, or specialist attending the Child for any reason, or any teacher of school which the Child attends, and each party shall furnish to the other with copies of all reports of any such person or entity.

The parties agree to consult with each other with respect to the education, religious training, health, welfare and other matters of similar importance affecting the Child, whose well-being, education and development at all times shall be the paramount consideration of the parties.

[5] When the parties divorced in August, 2003 the terms of the Minutes of Settlement were incorporated as part of the Corollary Relief Judgment.

[6] Since signing their Agreement the parties have shared the responsibility of parenting Joshua and have spent approximately an equal amount of time with him.

[7] In August, 2004 the Applicant and Kevin Bilquist were married.

[8] Mr. Bilquist was employed as a pilot with Air Canada Jazz. However, because of what he perceived as the company's uncertain future and how that might impact on his position, he accepted a pilot's position with Emirates Air and moved to Dubai in January or February 2004.

[9] Ms. Bilquist still spends the majority of her time in Halifax pending the outcome of this proceeding but it is her intention to relocate permanently to Dubai in August of this year. She and her husband sold their home in Fall River in November, 2004 and she resigned from her previous employment with Aliant.

[10] Mr. Bilquist has an apartment in Dubai but if Joshua was to live with them he and Ms. Bilquist would move to a villa in a residential area more suitable for children.

[11] Mr. Saunders and Ms. Flinn continue to live in the same residence in Waverley where they moved in 2003. They intend to marry later this year.

JOSHUA

[12] Joshua is ten years old . His parents love him very much. His stepfather, Mr. Bilquist, and his soon-to-be stepmother, Kelly Flinn, also care for him a great deal.

[13] Joshua has lived most of his life in Halifax or Halifax County and has always attended school in the Halifax Regional Municipality. He attends school at Ash Lee Jefferson Elementary School where he has many friends. He also has many close friends in the neighbourhood of his father's home.

[14] Academically he is doing well.

[15] His passion is hockey. He plays it year round. Both of his parents have been actively involved in ensuring that he attends his many practices and games

throughout the year. He is his team's goaltender. As such, in addition to the team's usual games and practices, he is involved in a goaltender school/mentor program called "A1 to 1 Goaltending" and attends goalie school every summer.

[16] In addition to hockey, he plays lacrosse for the Sackville Wolves. He is also involved with soccer, basketball and field hockey in his school's intramural program.

THE POSITIONS OF THE PARTIES

[17] Ms. Bilquist is asking the Court to vary the care arrangements as outlined in the Corollary Relief Judgment. She seeks to continue the joint custody arrangements but has asked the Court to grant her primary care of Joshua so that he can join her and her husband in Dubai.

[18] She believes that Joshua will enjoy living in Dubai and that such a move would offer Joshua a "fantastic experience". She also believes that the move to Dubai is an opportunity for Joshua that many other children will not have the chance of experiencing and "that he would be best off [accompanying her] to Dubai.". In September, 2003 she took him to Dubai for a visit and said that he enjoyed it very much.

[19] She says that Dubai will offer him the same or better amenities than are available in Canada. She describes the education system in Dubai for expatriate children as "outstanding". If Joshua was to live in Dubai he would attend a private school the cost of which is paid in part by Mr. Bilquist's employer. He would also be able to take part in a wide array of sporting activities including hockey. At the

present time there is one ice skating rink and one hockey arena in Dubai but apparently there are plans to build more.

[20] It is Ms Bilquist's intention not to work outside of the home.

[21] She appreciates the importance of Joshua maintaining a relationship with his father and proposes that Joshua spend block periods of time with Mr. Saunders in Halifax whenever the opportunity arises. It is her intention to return to Nova Scotia each summer because of the oppressive heat in Dubai during the summer months.

[22] Mr. Saunders is opposed to Joshua moving to Dubai. It is his position that Joshua is better off remaining in his community with Mr. Saunders and Ms. Flinn, and close to his friends, family and surroundings that he knows well. He too wants to maintain the joint custody arrangement.

[23] Mr. Saunders emphasizes that he has played a "very substantial and active role in Joshua's life" and says that if Joshua was to move to Dubai his role as a father would be significantly reduced to a few visits every few months.

[24] He is also concerned that given that Joshua's interest is in sports and in particular with hockey that notwithstanding the facilities in Dubai, he will not have the same opportunities to develop his skills in Dubai as he would if he stayed in Nova Scotia. He believes that Joshua would be very upset by being moved from his home and his friends. He does not believe that the move proposed by Ms. Bilquist is in Joshua's best interests.

[25] Mr. Saunders also expressed concern for his son's safety while living in Dubai, which is located on the Arabian peninsula, as well as for the possible stress of having to adapt to a new culture.

THE LAW

[26] Section 17 of the *Divorce Act* provides in part as follows:

17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,

...

(b) a custody order or any provision thereof on application by either or both former spouses or by any other person

...

(3) The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.

...

(5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.

(6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.

...

(9) In making a variation order varying a custody order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact.

[27] The leading case on parental mobility rights is the Supreme Court of Canada decision in *Gordon v. Goertz*, [1996] 2 S.C.R. 27; [1996] S.C.J. No. 522. In paragraphs 49 and 50 the Supreme Court summarized the law as follows:

1. The parent applying for a change in the custody or access order must meet the threshold requirement of demonstrating a material change in the circumstances affecting the child.
2. If the threshold is met, the judge on the application must embark on a fresh inquiry into what is in the best interests of the child, having regard to all the relevant circumstances relating to the child's needs and the ability of the respective parents to satisfy them.
3. This inquiry is based on the findings of the judge who made the previous order and evidence of the new circumstances.
4. The inquiry does not begin with a legal presumption in favour of the custodial parent, although the custodial parent's views are entitled to great respect.
5. Each case turns on its own unique circumstances. The only issue is the best interest of the child in the particular circumstances of the case.
6. The focus is on the best interests of the child, not the interests and rights of the parents.
7. More particularly the judge should consider, inter alia:
 - (a) the existing custody arrangement and relationship between the child and the custodial parent;
 - (b) the existing access arrangement and the relationship between the child and the access parent;
 - (c) the desirability of maximizing contact between the child and both parents;
 - (d) the views of the child;
 - (e) the custodial parent's reason for moving, only in the exceptional case where it is relevant to that parent's ability to meet the needs of the child;
 - (f) disruption to the child of a change in custody;
 - (g) disruption to the child consequent on removal from family, schools, and the community he or she has come to know.

In the end, the importance of the child remaining with the parent to whose custody it has become accustomed in the new location must be weighed against the continuance of full contact with the child's access parent, its extended family and its community. The ultimate question in every case is this: what is in the best interests of the child in all the circumstances, old as well as new?

DISCUSSION

[28] Ms. Bilquist's planned relocation to Dubai meets all the criteria of a change in circumstance as required by subsection 17(5) before a variation order is granted. (See *Gordon v. Goertz*, *supra*, at paragraphs 10 to 16.) Having come to that conclusion the Court is to "embark on a fresh inquiry" into what is in Joshua's best interest having regard to all of the relevant circumstances relating to Joshua's needs and the ability of his parents to satisfy them.

[29] As directed by the Supreme Court, each case turns on its own unique circumstances and there is no presumption in favour of either party. However, the so-called custodial parent's views are entitled to "great respect".

[30] The Corollary Relief Judgment provides that both Mr. Saunders and Ms. Bilquist have joint custody of Joshua. Their Agreement which forms part of the Corollary Relief Judgment provides that they share jointly the "custody, supervision, care and control" of Joshua. As important as the wording of the Order may be what is more important is how the parties have actually conducted themselves. Roscoe, J.A. addressed this issue in *Burns v. Burns*, 2000 N.S.C.A. No. 1, 182 N.S.R. (2d) 101, [2000] N.S.J. No. 2 (C.A.) at paragraphs 28 to 33:

28 The appellant mother refers to herself as the "primary care giver", and therefore says that she should be considered to be the custodial parent whose views are entitled to "great respect" as formulated in the fourth point in the summary of the law as set out in *Gordon v. Goertz*, *supra*. The respondent father vehemently opposes any such designation, arguing that the parents shared custody and therefore his views are entitled to equal consideration. In fact, that is apparently the entirety of the respondent's position.

29 It is clear that the children sleep three nights a week at their father's and four at their mother's. However, **the actual period of time spent with the children is not the only determinant. More importantly, in my opinion, is which parent has taken primary responsibility for all the important decisions concerning the health, safety, education, and overall welfare of the children, since the parties separated four years ago.** Mrs. Burns has been the one responsible for the medical follow-up required for

Justin and she makes the annual trip to Halifax with him for that purpose, where numerous medical and educational specialists are seen over several days. She has acquired the information about what symptoms to lookout for in the future, about what to tell his teachers concerning the effect of his illness on his learning abilities, and has made arrangements for several required appointments with an eye specialist. Although Mr. Burns is provided with all of this information by Mrs. Burns, he has not been primarily responsible for it.

30 In addition to the major matters, the primary caregiver is the parent who deals with the countless less significant, but nonetheless obligatory, daily arrangements for the children's clothing, haircuts, hygiene, extracurricular activities and everyday mundane affairs. Who would buy a present for them to take to a school friend's birthday party? Who makes the appointments and takes them to the dentist? Which parent is keeping the record of their vaccinations, and fills their prescriptions? Who goes to the parent-teacher interviews? Who chose the pre-school? Both parents testified that they attend the parent-teacher interviews and apparently they each attend the children's extracurricular activities. As well, Mr. Burns was Justin's hockey coach.

31 Although most of the other specific points were not addressed in the evidence, there were a few issues canvassed which, in my view, are relevant to this determination. They are the few concerns expressed by Mrs. Burns pointing to episodes of carelessness or lack of understanding by Mr. Burns, and which the trial judge called "minor matters". These include: not taking them to church when he had previously agreed to do so, not consistently following instructions for treatment of their skin conditions, not taking the children to the hospital or a doctor, or immediately advising Mrs. Burns, after having been in a car accident, in which Janelle suffered a bump on her head and cut near her eye as a result of hitting her head on the dashboard, and not taking Janelle to pre-school because she did not want to go.

32 It is clear from Mrs. Burns' evidence that she has a keen perception of the emotional needs of the children. Her description of their personalities and distinct needs is particularly revealing: "[Janelle] is very sensitive for her age. She is very..eh, she is very bright, she sees a lot of things that four year olds don't see. She sees very abstract things for a four year old and she just needs lots of love and attention like most four year olds." As well, it was her recognition that Justin's personality had dramatically changed that led to the discovery of his brain tumor, after earlier tests failed to reveal the problem.

33 My assessment of the evidence is that Mrs. Burns has been the primary caregiver and she is therefore the custodial parent whose views are entitled to great respect. She has been an exemplary parent and has assumed substantial responsibility for the care and general welfare of the children, and I believe has significant insight into their emotional, physical and psychological needs. (emphasis added)

[31] I am satisfied that Mr. Saunders and Ms. Bilquist were both actively and

as near as possible equally involved in all aspects of parenting Joshua including the time they spent with him, decisions regarding his upbringing, his day to day care, his education, his appointments, his recreation and his entertainment. They complied with their agreement and both seem to have been happy with the arrangement. The views of both of these parents therefore are entitled to great respect but the views of one no more than the other. Also, whatever may be the views of the parents, the focus of this application is on Joshua's best interests.

[32] *Gordon v. Goertz, supra*, lists a number of considerations to be taken into account when determining what is in the best interests of the child. They are as follows:

- (a) The existing custody arrangement and relationship between the child and the custodial parent; and
- (b) The existing access arrangement and the relationship between the child and the access parent.

[33] Since their divorce the parties have been equally involved in parenting Joshua and it would appear that he is equally attached to his mother and his father. In my view both parties are custodial parents and neither is an access parent in the sense that those terms are ordinarily applied.

[34] Both Ms. Bilquist and Mr. Saunders consider the other to be a good parent. In her affidavit Ms. Bilquist said Mr. Saunders was a very good father, and she acknowledged that Joshua has a close relationship with both of his parents. Mr. Saunders said that it would be traumatic for Joshua to be separated from either his mother or his father.

[35] Joshua also gets along very well with Mr. Bilquist and Ms. Flinn. Ms.

Bilquist said that she was “pleased with the care that [Ms. Flinn] provides to Joshua.” Mr. Saunders was complimentary of Mr. Bilquist’s relationship with Joshua.

(c) The desirability of maximizing contact between the child and both parents.

[36] Both parties acknowledge the desirability of Joshua maintaining contact with the other parent. If successful with her application Ms. Bilquist proposes that Joshua spend block times with his father during the summer, Christmas break and spring break from school. She also offers Mr. Saunders the opportunity to spend time with Joshua in Dubai whenever he is able to make his way to that country and even to stay at her residence if he prefers that over staying at a hotel. In addition, Mr. Saunders would maintain contact with Joshua by way of phone access, a web cam, e-mail and the like.

[37] If Joshua was to stay with his father, Mr. Saunders proposes similar contact by Joshua with Ms. Bilquist.

[38] Regardless of whose plan is accepted, the time spent by Joshua with his parents is going to change considerably.

[39] According to the evidence it takes approximately fifteen (15) hours to fly from Halifax to Dubai with a stopover either in New York or in London. Fifteen hours assumes a relatively short stopover at either of those locations. Because both Mr. Bilquist and Mr. Saunders are in the airline industry, Ms. Bilquist, Mr. Saunders and Joshua would be able to fly at a lower cost than might otherwise be the case, but those flights would involve flying standby. If Mr. Saunders was to fly

to Dubai the cost to him would be higher than the cost to Ms. Bilquist (who would use Emirates Air) to fly from Dubai to Nova Scotia. That is because Air Canada does not have flights to Dubai. Although Mr. Saunders would still be able to fly at a discounted rate with an associated airline the cost will be higher than if he was able to fly with Air Canada the entire distance. The cost would be considerably higher for both parties if they paid for confirmed seating.

[40] Mr. Bilquist would be able to use passes offered by his employer for Joshua to return to Canada at least twice a year at no cost to him if he had sole guardianship of Joshua. According to his evidence, it would not be enough for Ms. Bilquist to share joint custody of Joshua with Mr. Saunders for him to obtain those passes.

[41] Because Ms. Bilquist does not intend to work outside of the home once she moves to Dubai, she may have more flexibility in her schedule to visit with Joshua in Nova Scotia than would be the case for Mr. Saunders to visit with Joshua in Dubai because of his work commitments with Air Canada Jazz.

(d) The views of the child.

[42] There is no direct evidence of Joshua's views. According to Ms. Bilquist, he at one time expressed a desire to stay in Nova Scotia and on another occasion said he wanted to live with his mother. According to Mr. Saunders Joshua has told him that he would like everything to remain the way it was. There is no reliable evidence of Joshua's wishes and therefore this is not a factor.

(e) The custodial parent's reason for moving, only in the exceptional case where it is

relevant to that parent's ability to meet the needs of the child.

[43] Ms. Bilquist's reason for moving to Dubai is to be with her husband. Her desire to move is understandable. To remain in Nova Scotia would likely put a considerable strain on her marriage and impact on her happiness, and that in turn could detrimentally affect her ability to meet the emotional needs of the parties' son.

[44] Ms. Bilquist's move to Dubai is not in any way motivated by a desire to separate Joshua from his father.

(f) Disruption to the child of a change in custody.

[45] Both parties agree that regardless of the outcome of this application Joshua will experience a significant disruption. They acknowledge that he has a bond with both of his parents and has also grown close to Mr. Bilquist and Ms. Flinn. Regardless of the outcome he will have to adapt to extended periods of separation from people with whom he is emotionally attached and with whom he is used to spending a great deal of time.

[46] Both parties are equipped to be primary parents to Joshua. The change in care arrangements will require little adaptation on their parts. It is Ms. Bilquist's intention not to work outside the home while living in Dubai and therefore she will be available to care for Joshua after school. Mr. Saunders works approximately fourteen days per month and is off the remainder of the time. He has five weeks vacation each year. There is the possibility that he may be transferred to Toronto or Montreal but claims that even if that is the case he intends to remain living in

Halifax and commute to work each day. When he is not available to care for Joshua Ms. Flinn usually is. She is a nurse employed at the Halifax Infirmary. She works twelve hour shifts from 7:00 a.m. to 7:00 p.m. but occasionally from 7:00 p.m. to 7:00 a.m. It was her evidence that she is able to self-schedule approximately three months in advance which allows her, for the most part, to choose which days she works. Usually she works day shifts, but on average she works two night shifts each month. Between Ms. Flinn and Mr. Saunders one of them is usually available to care for Joshua when he is not in school. During those rare occasions when neither is available Mr. Saunders' sister cares for Joshua, or he is cared for by a sitter previously chosen by Ms. Bilquist.

(g) Disruption to the child consequent on removal from families, schools and the community he/she has now come to know.

[47] Both parties agree that Joshua does well in the community in which he currently resides. He is a good student. He excels at athletics and is heavily involved in sports.

[48] His aunt and uncle live nearby in Fall River. They occasionally care for him. His best friend lives close to Mr. Saunder's home. Joshua has many other friends as well, including friends in his school and friends with whom he plays hockey and lacrosse.

[49] If Joshua was to live in Dubai, leaving his school, friends, teammates and relatives would require a significant adjustment on his part.

OTHER CONSIDERATIONS

Finances

[50] Mr. Saunders has agreed to take a demotion from Captain to First Officer in order to increase the likelihood that he will remain based out of Halifax. This will mean a salary reduction of approximately \$25,000. per year.

[51] Neither Ms. Bilquist and her husband nor Mr. Saunders and his fiancée are wealthy. Mr. Bilquist says that his income was reduced when he accepted his position with Emirates Air, but he receives other benefits such as free accommodation. I am satisfied that both households are in a position financially to care for Joshua but the cost of air fare for the purpose of exercising access would be a financial strain on both households.

Safety Factors

[52] Mr. Saunders expressed concern over their son's physical safety while living in Dubai but there was no evidence presented to suggest that he would be any less safe in Dubai than in Nova Scotia.

Ms. Flinn usurping Ms. Bilquist's role as mother to Joshua

[53] Ms. Bilquist expressed concern over the possibility that Ms. Flinn was attempting to usurp Ms. Bilquist's role as mother to Joshua. She referred to a couple of incidences that occurred after her proposed move became an issue. I have not been satisfied that Ms. Flinn is trying to replace or undermine Ms. Bilquist.

CONCLUSION

[54] Both parties have established their ability to meet Joshua's needs. Before Ms. Bilquist's proposed move became an issue they worked well together as a team and, in spite of the breakdown of their marriage, cooperated fully with Joshua's parenting and considered the other to be a friend.

[55] As a consequence of Ms. Bilquist's move it is no longer possible for their parenting arrangement to continue without alteration so the Court must choose between their two plans.

[56] I find that both the Applicant and the Respondent are capable parents and both are able to assume the primary care of Joshua. Ms. Bilquist would be available to parent Joshua full time when he is not in school and the benefit of that arrangement is obvious. On the other hand if Joshua stayed in Nova Scotia for the most part either Mr. Saunders or Ms. Flinn would be available to care for Joshua. On those rare occasions when neither is available he would be cared for by his aunt or a sitter with whom he has been familiar for a number of years. There are benefits to him maintaining contact with all of those people.

[57] Because of Joshua's attachment to both of his parents as well as his step-parents, I accept that wherever he is placed he will have to endure a major adjustment to cope with the fact that he is separated from one of his parents as well as others with whom he has grown close. He is no less attached to one parent than the other.

[58] Whether Joshua stays in Halifax with his father or moves to Dubai with his

mother his direct contact with one of his parents will be limited largely to block times during his school breaks. As generous as those block times might be, his time with one of his parents will be greatly reduced from that to which he has been accustomed. There is however a slight possibility that his mother will be able to see him more often than his father because of her intention not to work outside of the home and because of the availability of flights to her.

[59] The cost associated with access would be a burden to both parties.

[60] With all other considerations being so equal, the factor that stands out most is the disruption that will be caused to Joshua's connection to his community, friends, classmates, sporting activities, teammates, neighbours, relatives and caregivers if he moved to Dubai.

[61] For the past 2 years he has lived in the Fall River / Waverley area. His life has been stable and he has flourished in all respects. His parents are responsible for most of his success, but credit too must be given to his environment which includes his teachers, coaches, friends, neighbours, extended family members and others with whom he has associated. A move to Dubai would be a major change to this child's life. I agree with Wilson, J.F.C. as quoted by Pugsley J.A. in *Mahoney v. Dorion* [2000] N.S.J. 12 (C.A.) at paragraph 22:

...while Jeremy may adjust well to a move, it is never wise to interfere with an established successful life style unless there are compelling reasons for doing so. While it is important to try and maintain day to day contact with his Mom, this factor alone does not outweigh all of the other factors...

[62] It will be difficult enough for Joshua to adjust to the absence of one of his

parents. But adjust he must. However, it is difficult to justify the further disruption that he would experience by being separated from everything else that is familiar and has meant so much to him.

[63] Having considered all of the evidence and the factors listed in *Gordon v. Goertz, supra*, I find that it would be in Joshua's best interests to remain in Halifax. Therefore the following is ordered:

1. The present joint and shared custody arrangement will continue until such time as Ms. Bilquist relocates to Dubai, which, according to her evidence will be at the end of August 2005. But for her move to Dubai, I would not vary the custody provisions of the Collorary Relief Judgement.
2. Upon Ms. Bilquist relocating to Dubai, the parties will continue to share joint custody of Joshua, but Joshua's primary residence will be with his father who will then have primary care and control. This order is made on the assumption that Mr. Saunders will not be relocating from Waverley even if Air Canada transfers him outside of Nova Scotia. The relocation of his residence may be viewed as a material change in circumstance.
3. Mr. Saunders will make the day to day care decisions regarding Joshua while Joshua is in his care and Ms. Bilquist will make the day to day care decisions regarding Joshua while he is in her care. Neither will make any major developmental decision regarding Joshua without the consent of the other party except both are authorized to make emergency decisions regarding Joshua's medical treatment provided they contact and inform the other party as soon as is reasonably possible. A major developmental decision is any decision which may

significantly affect Joshua's education, religious upbringing, health or medical care or relationship with the other party.

4. Both parties shall continue to be entitled to receive information relating to Joshua such as school report cards, medical reports, information regarding his recreational activities and the like and will continue to be entitled to attend any functions and meetings relating to Joshua that parents are normally entitled to attend, such as school related events, medical and dental appointments, recreational activities and the like. Both parties will share with each other any information they receive concerning Joshua including information relating to his health, education and recreational activities and will make reasonable efforts to keep the other informed of matters relating to Joshua.

5. Both will keep the other informed of any changes to his / her mailing address, home phone number, work phone number (if applicable), e-mail addresses, fax numbers, and any other contact information.

6. Ms. Bilquist will have the care of Joshua during the following times:

- (i) a minimum of one month during Joshua's summer vacation from school;
- (ii) during Joshua's Christmas vacation from school in alternate years, commencing in December 2005;
- (iii) each of Joshua's Spring break vacations;
- (iv) liberal telephone access at reasonable times;
- (v) unlimited e-mail access;
- (vi) web cam access at reasonable times; and

(vii) such other access as the parties are able to agree to from time to time including reasonable additional access to Joshua in Nova Scotia when Ms. Bilquist is able to visit the Province.

7. At the present time no child support is being paid by either party. Subject to any subsequent order relating to child support Ms. Bilquist will be responsible for her or Joshua's airfare costs relating to her care of Joshua.

[64] I am not prepared to order Mr. Saunders to sign any papers that purport to transfer guardianship of Joshua to Mr. Bilquist simply to enable Ms. Bilquist to obtain flight passes for Joshua.

[65] Counsel for Ms. Saunders will prepare the Order.

J.