

**SUPREME COURT OF NOVA SCOTIA**  
**FAMILY DIVISION**

**Citation:** *Symonds v. Macias and Symonds*, 2024 NSSC 124

**Date:** 20240506

**Docket:** SFHPSA-124275

**Registry:** Halifax

**Between:**

Janice Pearl Symonds

Applicant

v.

Cindy Macias and Jermaine Symonds

Respondents

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**Judge:** The Honourable Justice Daniel W. Ingersoll

**Heard:** November 30, 2023, in Halifax, Nova Scotia  
Written submissions December 3 and 4, 2023

**Written Release:** May 6, 2024

**Summary:** Child relocated from Ontario to Nova Scotia to live with paternal Grandmother in 2019. Grandmother sought primary care of child. Child's mother sought return of child to Ontario. Primary care granted to Grandmother.

**Key words:** Parenting and Support Act Order, Relocation Request by Mother, Primary Care Application by Grandmother, Best Interests of the Child, Relocation Considerations, Leave of the Court, Child Support, Child's Circumstances

**Legislation:** *Parenting and Support Act*, R.S.N.S. 1989, c. 160

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**Counsel:** Michelle J. Clearly, counsel for the Applicant  
Jennifer Knebel Reid, counsel for the Respondent  
Jermaine Symonds, Self-Represented

**By the Court:**

**1 Introduction**

[1] Enrique is twelve years old and has lived with his grandmother Janice Symonds in Nova Scotia since 2019. Ms. Symonds seeks an order granting her primary care and decision-making authority for Enrique. She also seeks child support from Enrique's parents.

[2] Cindy Macias is Enrique's mother. Ms. Macias lives in Toronto and wants Enrique returned to her primary care at the end of the school year. She says that a 2016 Ontario Court of Justice order granted her sole custody of Enrique, and that Ms. Symonds has kept Enrique in Nova Scotia without her consent. Ms. Macias seeks a child support order against Enrique's father, Jermaine Symonds, and an order that Mr. Symonds and/or Ms. Symonds pay the cost of Enrique's travel back to Nova Scotia when he visits Ms. Symonds.

[3] Jermaine Symonds is Enrique's father and Ms. Symonds' son. Mr. Symonds also lives in Toronto and says that Enrique should remain in his mother's care in Nova Scotia.

## **2 Concession regarding Leave**

[4] Because Ms. Symonds is Enrique's grandmother, she requires leave of the court to advance her primary care application (*Parenting and Support Act*, 1989 RSNS c. 160, Section 18 (1), (the Act)). Neither Ms. Macias nor Mr. Symonds contest the granting of leave; accordingly, I grant Ms. Symonds leave to seek primary care of Enrique.

## **3 Proposed Relocation**

[5] Ms. Macias seeks to have Enrique relocated from Nova Scotia to Ontario. She says that in considering her request that I must apply the relocation considerations set in Section 18H of the Act. Ms. Symonds says the relocation considerations need not be addressed because she is not seeking to relocate Enrique and because Ms. Macias has not made a Relocation Application under section 18.

[6] I agree with Ms. Macias that I must apply the Act's relocation considerations in considering her relocation request. Ms. Macias may not have framed her application as a Relocation Application, but Enrique's relocation from Nova Scotia to Ontario has been her sole objective throughout this proceeding. Because Ms. Macias seeks to change Enrique's place of residence, and because that change of residence, if permitted, can reasonably be expected to significantly impact

Enrique's relationship with both his parents and with his grandmother I must apply the relocation analysis set out in Section 18H of the Act.

[7] To resolve the competing requests regarding Enrique's future I must resolve the following issues:

- a. Is Enrique relocating to Ontario in his best interests?
- b. If not, what parenting arrangement is in Enrique's best interests?
- c. Who must pay child support in respect of Enrique, and in what amount?

### **3.1 The Burden**

[8] Before addressing whether relocation is in Enrique's best interests, I must first determine which party bears the burden of proving that a relocation is or is not in his best interests. Section 18H(1A)(b) of the Act states that if a court order provides that the child to be relocated spends the vast majority of their time with the parent seeking relocation, and that parent is in substantial compliance with the order, the other parent bears the burden of establishing that the move is not in the child's best interests. The parties agree that a prior order exists directing that Enrique spend the vast majority of his time with Ms. Macias. The parties disagree as to whether Ms. Macias is in substantial compliance with that order.

[9] All parties concede that in 2016, the Ontario Court of Justice granted Ms. Macias sole custody of Enrique, with limited and specified parenting time to Mr. Symonds. Notwithstanding that 2016 order, Ms. Macias asked Ms. Symonds to assume care of Enrique in Nova Scotia in 2019 for the upcoming school year and as well agreed that he would remain in Nova Scotia for the 2020/2021 school year.

[10] Ms. Macias says she is in substantial compliance with the order even though Enrique does not spend the vast majority of his time with her. Ms. Macias says that Enrique traveled to Ontario to visit her in the summer of 2021 and was supposed to remain with her. She says that Mr. Symonds took Enrique back to Halifax in August of 2022 on a false pretense, but notwithstanding that allegation says that she thereafter “reluctantly” agreed due to the high second wave of COVID that Enrique would remain in Nova Scotia and continue his schooling. By the next summer Ms. Symonds had applied to be granted primary care of Enrique and would not consent to his return to Ms. Macias’ care.

[11] Although a court in Ontario has granted Ms. Macias primary care of Enrique, I find that Ms. Macias is not in substantial compliance with that order, as Ms. Macias permitted Enrique to relocate to Nova Scotia in 2019 where he has remained for over four years. Enrique was in Ms. Symonds’ care in Nova Scotia with Ms. Macias’ consent when Ms. Symonds filed her application for primary

care. I find that Ms. Macias' objection to Enrique remaining in Ms. Symonds' care does not mean that she is in compliance with the 2016 Ontario Court of Justice order. Ms. Macias is not in compliance with the Ontario order because Enrique does not spend the vast majority of his time with her. As a result, all parties have the burden of showing what is in Enrique's best interests.

#### **4 Is Enrique relocating to Ontario in his best interests?**

[12] In considering Ms. Macias' relocation request I must give paramount consideration to Enrique's best interests (Section 18H (1)).

[13] Justice Beaton, on behalf of the Nova Scotia Court of Appeal in *Weagle v. Kendall*, 2023 NSCA 47, identified the sole question that drives relocation cases:

**1** Relocation cases are driven, like all parenting cases, by the question of the best interests of the child(ren). In its recent decision in *Barendregt v. Grebliunas*, 2022 SCC 22 the Supreme Court of Canada recognized the burden presented to judges in cases of relocation:

[8] Determining the best interests of the child is a heavy responsibility, with profound impacts on children, families and society. In many cases, the answer is difficult -- the court must choose between competing and often compelling visions of how to best advance the needs and interests of the child. The challenge is even greater in mobility cases. Geographic distance reduces flexibility, disrupts established patterns, and inevitably impacts the relationship between a parent and a child. The forward-looking nature of relocation cases requires judges to craft a disposition at a fixed point in time that is both sensitive to that child's present circumstances and can withstand the test of time and adversity.

[14] Section 18H (4) directs me to assess Enrique's best interests on this relocation question by considering ten factors. The first is an assessment of the best interests' factors set out in Section 18(6) of the Act.

[15] In considering Ms. Macias' relocation request I must remain focused on Enrique's best interest and not focus on the implications of the relocation on his mother (see *Weagle, supra* paragraph 56) or his grandmother.

[16] I must not prefer Ms. Macias' relocation plan simply because she is Enrique's mother. As noted by Justice Marche in *Farrell-Wadden v. Mombourquette*, 2023 NSSC 164 (citing *B.J.T. v. J.D.*, 2022 SCC 24) when competing parenting plans are put forth by a grandparent and a biological parent, there is no presumption in favour of the child being placed in the care of the biological parent (paragraph 32). Rather than presume that one of the competing parenting plans be preferred, I must take all relevant factors into account and compare and balance the advantages and disadvantages of each competing parenting plan to determine whether relocation is in Enrique's best interests (*D.A.M. v C.J.B.*, 2017 NSCA 91).



#### **4.1 Enrique's best interests**

[17] I will now consider the best interest factors which are particularly relevant to Enrique's situation. While I have considered all the identified best interest factors set out in Section 18(6) of the Act (Section 18H (4)) the weight I attach to individual factors will depend on the circumstances.

#### **4.2 Physical, emotional, social and educational needs, including the need for stability and safety, taking into account the child's age and stage of development;**

[18] Enrique is twelve. He is described as being gentle and kind. He struggles with change and can be quite emotional. He is in Grade 7 and has attended the same school since Grade 3.

[19] Enrique has significant physical, social, emotional, and educational needs.

[20] Enrique has been diagnosed with ADHD, experiences anxiety and struggles with childhood obesity. He has had three eye surgeries since moving to Nova Scotia and requires checks ups every six months.

[21] Enrique struggles with emotional regulation. In the spring of 2023 Enrique attended an IWK Community Mental Health program for children having difficulties with anxiety and dysregulation. Ms. Symonds attended with him. After

being on a wait list for two years Enrique finally received appointments with a psychologist in November and December of 2023.

[22] Enrique struggles in school. His current educational level is described as being several grade levels behind his actual grade. Enrique's educational deficits were apparent when he moved to Nova Scotia in 2019 and confirmed in a psycho-educational assessment report completed in the fall of 2019. That report noted that academically Enrique had difficulty regulating and sustaining his attention and concentration and concluded that he had significant difficulties in all areas of reading, spelling, and math but that he had made progress since starting at his new school. The report recommended that Enrique's programming and process be closely monitored at school and at home and that he would benefit from a significant amount of support at school and at home, to make gains academically.

[23] Enrique has received resource assistance at school. His teachers say that he has advanced academically, socially, and emotionally since moving to Nova Scotia.

[24] Enrique did not follow the public-school program in Grade 6 but rather had an individual learning plan to address his challenges in reading, writing, math, and emotional regulation. With respect to emotional regulation his plan noted that he

was beginning to utilize strategies in school to regulate his emotions and that he was able to transition from learning space to learning space smoothly but was very focused on time and was fearful of being late or missing certain routines and activities.

[25] Psychologist Jennifer Kilfoil completed a follow up behaviour assessment report in respect of Enrique in the spring of 2023 at the request of Enrique's school team. Ms. Kilfoil's report noted that Enrique continues to have difficulty regulating and sustaining his attention and concentration as well as regulating his emotions. It was noted that Enrique also struggles in interactions with his peers.

[26] Enrique is not on an independent learning plan this year but appears to require considerable support to meet his educational goals. His current teacher has endorsed Enrique working with a tutor.

[27] Enrique requires a learning and living environment in which his complex mix of physical, emotional, social, and educational needs, as well as his need for stability are understood and accommodated.

#### **4.3 History of care and the proposed plans of care, having regard to the child's physical, emotional, social and educational needs;**

[28] I will first address Enrique's history of care and then consider the proposed plans for his care.

[29] Ms. Symonds has been involved in Enrique's care for most of his life, providing him much needed stability and shelter. This assistance was initially offered because Ms. Macias experienced significant trauma, abuse, and insecurity during Enrique's early childhood. Ms. Macias says in 2013 her life was in chaos due to her work, her finances and Mr. Symonds' violence toward her and that "it was that bad that Janice had to come and step in and help". As a result of Ms. Macias's circumstances, Ms. Symonds secured a job transfer and moved to Ontario when Enrique was 1.5 years old to live with, he and Ms. Macias. The three lived together until 2016. During that time Ms. Symonds says they shared Enrique's care as Ms. Symonds worked during the day and Ms. Macias worked in the evening.

[30] Ms. Symonds says she moved out of that shared accommodation in 2016 but remained in Ontario until 2018 and during that time she remained involved in Enrique's care. Enrique returned to Nova Scotia with Ms. Symonds for the summer of 2018 and returned to Ms. Macias' care in September of 2018.

[31] Enrique was with Ms. Macias for the 2018/2019 (Grade 2) school year. Although Ms. Symonds had moved back to Nova Scotia, she traveled back to Ontario to care for Enrique during that school year. By the end of Grade 2 Enrique had moved with his mother three times since starting school and had been in three different schools. By the end of Grade 2 Enrique was in a deficit position at school.

I have no evidence that in the year that Ms. Macias was solely responsible for Enrique that she had taken action to understand and assess Enrique's learning difficulties.

[32] Ms. Macias experienced continued chaos in the summer of 2019 due to her financial and employment circumstances and asked Ms. Symonds to assume care of Enrique in Nova Scotia for the 2019/2020 school year. Ms. Symonds agreed and assumed Enrique's primary care at that time.

[33] The evidence does not establish that Ms. Macias' parents assisted her or cared for Enrique between 2013, when Ms. Symonds moved to Ontario, and 2019 when Enrique relocated to Nova Scotia. Ms. Macias turned to Ms. Symonds when she needed parenting help.

[34] Ms. Macias says she has been engaged in Enrique's care since he moved to Nova Scotia to the extent she has been able. For various reasons, including finances and COVID, Ms. Macias has spent little time in Nova Scotia since 2019 and thus has had little direct contact with Enrique's teachers and care providers. She has communicated with Enrique's care providers remotely and did attend in Nova Scotia for his first eye surgery.

[35] For the last four years Ms. Symonds has addressed and navigated Enrique's educational and health needs. She has maintained close contact with his educational and medical circle of care. She has supported him at school. She has ensured that he was assessed for ADHD and for his eye issues. She has been conscious of his needs and has sought out appropriate educational, medical, and psychological diagnosis, assessment and treatment as needs have emerged, including but not limited to Enrique's learning challenges, his anxiety, and his emotional regulation.

[36] Ms. Symonds has been an important source of security and stability for Enrique. This security and stability is important given Enrique's experience with anxiety. For the past four years Ms. Symonds has been primarily responsible for having Enrique's social, education, educational and health needs understood, assessed, and addressed.

[37] Ms. Symonds has been an advocate for Enrique in pursuing assessments and interventions to ensure his educational and medical needs are understood and addressed.

[38] Ms. Symonds has been Enrique's primary parental figure in arranging and attending his medical appointments including, for example, attending the IWK Mental Health program with Enrique.

[39] She has ensured Enrique's developmental needs have been understood and addressed.

#### **4.4 The plans**

[40] Ms. Macias says she can provide the stability and support Enrique needs. She says Enrique has had a number of struggles while living in Nova Scotia (including bullying and difficulty learning at school) and his physical and mental health have declined during the time he has lived in Nova Scotia. She hopes Enrique's mental and physical health will improve with a change in school and scenery and a return to her care, with support from her and necessary professionals.

[41] Ms. Macias says, if returned to her care, Enrique would live with her in her parents' home in Brampton.

[42] Ms. Macias' educational plan for Enrique is for him to attend a school 1.28 kilometers from her home. He will take the bus to that school. Enrique will be in that school for one year and will then transfer to a nearby high school.

[43] With respect to her medical plan for Enrique, Ms. Macias says that Enrique would be cared for by her family physician (who cared for Enrique before he left Ontario) and that Sick Kids Hospital in Toronto would provide emergency care to Enrique particularly in relation to his eye condition. Ms. Macias says she is not opposed to treating Enrique's ADHD symptoms with medication but believes that alternatives to medication (such as nutrition) are worth trying first. Ms. Macias admitted that she had referred to Enrique's anxiety as "BS," but she no longer feels that way. She says that Enrique's anxiety experience is being "twisted" and taken out of context.

[44] With respect to her overall care plan, Ms. Macias will provide care to Enrique and will rely on her family to provide care when she is unavailable. Ms. Macias works Monday to Thursday, and again on Saturday, at a chiropractor's office. Her work hours include hours after school and into supper time.

[45] Ms. Macias anticipates that her parents and her aunt and uncle will care for Enrique when she is not available. Her father is retired, her mother works outside the home and is gone between 6:45am and 4:00pm. Her father drives her mother to and from work. Both of her parents work as cleaners in the evening after 6pm. She says that at 6:00pm her aunt and uncle, who live in the basement apartment of her parents' house would be home.



[46] I have no information about Ms. Macias' aunt and uncle, who live in her parents' house or their relationship with Enrique. Information about this aunt and uncle is material, as Enrique would be cared for by them four evenings a week from 6pm until Ms. Macias arrives home from work. The evidence does not indicate that this aunt and uncle are prepared to care for Enrique and, further, if they are prepared to care for him that they understand what Enrique requires in terms of care.

[47] The lack of information about the willingness of Ms. Macias' parents and aunt and uncle to care for Enrique raises further concerns because Ms. Macias also has a teeth whitening business and cleaning business which could take her away from home at times when Enrique is home and needing care. The details of when Ms. Macias may be away from home in the evenings or on the weekends is not sufficiently detailed, nor is her plan for who will care for Enrique if she is working away from home in the evenings or on the weekend.

[48] Ms. Symonds says that Ms. Macias' plan is not child focused.

[49] Ms. Symonds' plan involves Enrique remaining in her care in her home with her husband and her mother (Enrique's great-grandmother). The pattern of care, during school days at Ms. Symonds' home, involves her getting Enrique ready and

off to school in the morning and her husband, who is not working, being at home when Enrique arrives home and staying with Enrique until Ms. Symonds gets home from work.

[50] Ms. Symonds' educational plan for Enrique sees him attending the same school that he has attended since Grade 3. He has two more years (Grades 8 and 9) in that school before moving to high school. The teachers in that school know Enrique. The school has commissioned two educational assessments which can be used by the school in tailoring Enrique's educational needs to his particular challenges.

[51] Ms. Symonds has signed Enrique up for soccer, a socially and physically important activity.

[52] Ms. Symonds, medical plan sees Enrique remaining in the circle of care which currently surrounds him. His team is aware of his ADHD, anxiety, and childhood obesity. Enrique has recently begun seeing a psychologist, following a two year wait.

[53] I find that Ms. Symonds' plan for Enrique is solid, grounded in reality, based in experience and highly responsive to Enrique's needs. Her plan provides stability and security to Enrique, which is especially important given his anxiety and

challenges with change. All persons currently involved in Enrique's care (Ms. Symonds, her husband Wade, educational resource personnel, physicians, and other specialists) will continue.

[54] I am concerned that Ms. Macias' plan will not provide the stability and security that Enrique needs. Over the past eleven years (since 2013), Ms. Macias has only cared for Enrique by herself without Ms. Symonds being in the province, for ten months (when he was in Grade 2) and even during that year Ms. Symonds traveled to Toronto several times to care for Enrique. Ms. Macias has twice called to call on Ms. Symonds to provide long term assistance with Enrique's care. She does not have an established experience of independently addressing Enrique's needs.

[55] Ms. Macias' plan also lacks the assurance of stability and informed and appropriate care giving because I am not satisfied that her parents or her aunt and uncle understand Enrique's needs or have had any prior involvement with him. Her parents run a cleaning business and are not available in the evening. I do not have evidence that these family members are prepared or able to meet Enrique's needs.

[56] I am mindful of the fact that in 2013, and again in 2019 when Ms. Macias needed help with Enrique, she turned to Ms. Symonds and not her parents or other

family members. Although she lives with her family now, Ms. Macias' past experience in turning to Ms. Symonds for assistance does not support a conclusion that her parents are willing or able to care for Enrique.

[57] I am also concerned Ms. Macias does not grasp the significance of Enrique's medical circumstances. I am concerned she has in the past considered Enrique's experience with anxiety to be "BS" and that she wishes to explore alternate treatments for ADHD which appears to reflect her personal view as opposed to an informed view based on medical advice. Ms. Macias has not offered a medical plan outlining how she would ensure the pressing and significant medical issues in Enrique's life would be properly managed.

[58] My concern that Ms. Macias may rely on her own views in deciding what is in Enrique's best interest, as opposed to relying on medical evidence, is heightened by her refusal to permit Enrique to have a third COVID vaccine. In February of 2023 Ms. Macias refused to permit Enrique to be vaccinated a third time because of the "amount of children who are getting heart disease". She offered no medical basis for her view that the third vaccine could harm her son.

[59] Ms. Macias' reaction to her son's struggles also raise concern that she may not appreciate the complexity and interconnectedness of her son's circumstances.

In an email dated March 17, 2023, Ms. Macias said Ms. Symonds was to blame for Enrique's lack of confidence and getting bullied. In that email she also said she learned that her son was sixty-six pounds overweight saying to Ms. Symonds "SHAME ON YOU JANICE." Later, on March 31, 2023, Ms. Macias said Ms. Symonds was the reason Enrique was sixty-six pounds overweight. In that email Ms. Macias said Enrique's anxiety was bad because of Ms. Symonds.

[60] Ms. Macias' opinion that Ms. Symonds is to blame for her son's lack of confidence, the fact that he was bullied, and is overweight does not indicate an understanding of the complex nature of her son's situation or the extent to which the trauma that Enrique has experienced by persons other than Ms. Symonds may be contributing to his current circumstances. I am concerned that Ms. Macias may not understand the nature and complexity of Enrique's situation which may result in her son not receiving the medical, psychological, and educational attention, assessment, or treatment he requires.

[61] Further, Enrique finally has access to a psychologist after a two-year wait. I do not have evidence of the availability of such a resource in Ontario, or, if it is available when it would be available. The service is available in Nova Scotia now.

**4.5 Each parent's or guardian's willingness to support the development and maintenance of the child's relationship with the other parent or guardian;**

[62] Both Ms. Symonds and Ms. Macias says that they will facilitate the other having access with Enrique if awarded primary care.

[63] Relations are strained between Ms. Symonds and Ms. Macias. Ms. Macias accused Ms. Symonds of lying about her to gain custody of Enrique. She says that there is a lack of trust between she and Ms. Symonds but denies that she communicates with her as little as possible.

**4.6 Cultural, linguistic, religious and spiritual upbringing and heritage, including the child's Aboriginal upbringing and heritage, if applicable;**

[64] Ms. Macias is from Columbia. She says that her culture is important to her. Family and large family gatherings are part of her cultural experience. She wants Enrique to have that large interactive family experience.

**4.7 Child's views and preferences;**

[65] I must take Enrique's views and preferences into account if I am satisfied it is necessary and appropriate to ascertain them given his age and stage of development and if his views and preferences can reasonably be ascertained. Social Worker, Wendy Green interviewed Enrique twice and prepared a Voice of the Child Report. She testified at the hearing.

[66] Enrique told Ms. Green that he did not want to return to Toronto but found it difficult to discuss with his mother as she would cry. He said his mother said that his grandmother and father kidnapped him. In Ms. Green's opinion telling his mother he does not wish to return to live with her is too much to expect from a boy Enrique's age.

[67] Ms. Green concluded that Enrique appeared stressed by the conflict in his family, He reported to Ms. Green that he was worried his mother was mad at him for "choosing" to stay in Nova Scotia. He said his mother's family with whom she lives, speak primarily Spanish in their home and this makes him feel left out and uncomfortable.

[68] Ms. Green concluded that Enrique's preferences appear to be valid and genuinely related to his experiences and perceptions. However, she observed "What is not clear is whether his feelings are resultant from conflict between his parents, fear of ongoing family court litigation, and fear of his father and grandmother being charged and incarcerated for "abuse"". She concluded that Enrique thought that if he chose to return to live with his mother that this would be evidence he had been kidnapped. Enrique's thinking indicated to Ms. Green that Enrique was not really choosing to live in Nova Scotia but rather was making this

choice because he believed not staying in Nova Scotia would mean that his “Dad and Nan are guilty in court.”

[69] Ms. Green reported she was unable to conclude if Enrique had been influenced or coached.

[70] Ms. Green was unequivocal in her conclusion that Enrique is a child experiencing significant stress and pressure. She noted Enrique seems to blame himself for his family’s situation.

[71] Ms. Green felt Enrique would benefit from counseling and from engagement in activities outside of school.

[72] Ms. Macias says Enrique’s wishes as expressed to Ms. Green should be given little weight. She notes Enrique is still young and is not the one who should be making this decision

[73] I agree with Ms. Macias that Enrique’s preference to remain in Nova Scotia should be given little weight. I accept Ms. Green’s observation as accurate that Enrique is stressed by the conflict in his family. I accept as accurate her observation that it is difficult to determine if Enrique’s expressed preference of remaining in Nova Scotia is a strategic decision to ensure his father and grandmother are not found guilty of kidnapping. I accept that Enrique told his



mother he wished to remain in Nova Scotia but I am unable to conclude whether the expressed wish was his sincere desire or a strategic statement to ensure his father and grandmother would not be charged if he chose to return to Toronto.

[74] I find it is appropriate for me to determine where Enrique should live without reference to his expressed wish.

**4.8 Nature, strength and stability of the relationship between the child and each parent or guardian and grandparent;**

[75] I find Enrique has a strong relationship with his mother and with his grandmother. Enrique enjoys spending time with his father.

**4.9 The ability of each parent, guardian or other person in respect of whom the order would apply to communicate and co operate on issues affecting the child;**

[76] Communication has become strained between Ms. Macias and Ms. Symonds. Historically, Ms. Macias and Ms. Symonds were close. Ms. Macias has relied heavily on Ms. Symonds. They have traveled to Columbia together. It is my impression that this litigation has been a major stressor in their relationship.

[77] Notwithstanding the stress of this litigation Ms. Macias and Ms. Symonds have communicated about Enrique's eye surgeries. Ms. Macias attended in Halifax for one surgery and provided her consent to treatment remotely for other procedures.

[78] Although their relationship is strained, I have no doubt that Ms. Macias and Ms. Symonds can communicate as required to ensure Enrique receives the best possible care.

**4.10 Civil or criminal proceeding, order, condition or measure that is relevant to the safety, security and well-being of the child**

[79] Ms. Macias says Mr. Symonds has been physically and verbally abusive. She says his abuse led her to ask Ms. Symonds for help in 2013. Mr. Symonds was arrested during this proceeding, but the nature of the charges were not disclosed by him or investigated by Ms. Symonds.

[80] Ms. Macias is prepared to permit Mr. Symonds to have parenting time with Enrique if she is granted primary care of Enrique.

[81] I am concerned that Ms. Symonds has not been sufficiently concerned regarding Mr. Symonds' interactions with the police. With respect to Mr. Symonds' most recent arrest, Ms. Symonds testified she did not know what he was charged with and left it to Mr. Symonds to tell her about it if he chose to do so. That response is not sufficiently child focused. Ms. Symonds must act protectively with respect to Enrique. Even though Mr. Symonds is her son, she owes a duty to her grandson Enrique to ensure that he is not exposed to persons who may harm him or expose him to an inappropriate situation. Ms. Macias says that Mr.

Symonds is a pimp. Mr. Symonds did not specifically deny that allegation nor did Ms. Symonds. Ms. Symonds' lack of inquiry into her son's engagement with the police deprived her of the information she requires to determine if she should be concerned with Enrique spending time with his father. She must decide if it is Enrique's best interest to spend time with Mr. Symonds away from her home including for example going to hotels in Halifax with Mr. Symonds when he visits Halifax. She can only reach such a conclusion after considering all information regarding her son's activities.

## **5 The Other Relocation Factors**

[82] In considering where Enrique should live there are a number of other factors which I must consider in addition to best interests' factors. I have considered all of the other relocation factors and will now address the most relevant factors.

### **5.1 The Reasons for the Relocation**

[83] Ms. Macias seeks to resume primary care of Enrique in Ontario where she lives and works, and where Enrique lived until relocating to Nova Scotia in 2019. She is settled in Ontario where she has immediate and extended family and friends. She says it is Enrique's best interest to be returned to her care in Ontario.

[84] Ms. Macias says she consented to Enrique's relocation to Nova Scotia but no longer consents to him remaining in Nova Scotia. Ms. Macias has never lived in Nova Scotia and has no family here. She says it is not in Enrique's best interest to remain in Nova Scotia.

**5.2 The Effect on the Child of Changed Parenting Time and Contact Time Due to the Relocation.**

[85] This relocation would not have a significant effect on Enrique's parenting time with his father.

**5.3 The Effect on the Child of the Child's Removal from Family, School and Community due to the Relocation;**

[86] Enrique's school experience in Nova Scotia has not been entirely positive. He has been bullied. Without minimizing the harm that may have caused him it is my view that his experience of bullying is not a reason to relocate him to Ontario.

[87] I am not satisfied that Enrique's social experience will necessarily be better in Ontario. Enrique's school experience in Ontario was not entirely positive. He reported to Wendy Green regarding a number of social difficulties he experienced in Ontario. Enrique has a number of challenges which will affect his school experience and his perception of that experience wherever he lives.

[88] I am satisfied Enrique's removal from his Nova Scotia family, his school and his community would have a negative effect on him and would not be in his best interests.

#### **5.4 The Appropriateness of Changing the Parenting Arrangements**

[89] It is my view that it is not in Enrique's best interest to relocate to Ontario to his mother's primary care.

#### **5.5 Compliance with Previous Court Orders and Agreements by the Parties to the Application**

[90] I have addressed the 2016 order. Ms. Macias has struggled to comply with the interim orders which have been granted in this proceeding. I am not convinced that those compliance issues should affect the outcome of the proceeding.

#### **5.6 Any Additional Expenses that may be Incurred by the Parties Due to the Relocation**

[91] I find the costs of flights between Nova Scotia and Ontario are not so expensive that they would influence the outcome of my analysis on whether to allow or deny the relocation request. Transportation costs are relevant to the question of child support and will be considered separately.

### **5.7 Conclusion regarding Relocation Request**

[92] I have no doubt that Ms. Macias loves her son deeply and sincerely wishes that he be returned to her care in Ontario. Notwithstanding her love for her son, I am not convinced that Ms. Macias' plan to relocate Enrique to Ontario is in his best interests.

[93] I am satisfied that Ms. Symonds has been a critical source of stability for Enrique and that she is best placed to continue to provide for Enrique's educational, social, and physical needs. I find it is not in Enrique's best interest to be removed from Ms. Symonds' care.

### **6 Primary care of Enrique**

[94] I have determined Enrique should not return to Ontario and should not return to his mother's primary care.

[95] I find, for the reasons stated above, that Enrique should remain in the primary care of his grandmother Ms. Symonds.

### **7 Parenting schedule**

[96] Ms. Symonds proposes Ms. Macias have five in person parenting visits per year, additional parenting time as agreed between the parties, unrestricted

phone/virtual contact, that Ms. Macias travel with Enrique if he travels to Ontario and that Ms. Macias fund all parenting time travel costs.

[97] Ms. Macias has not addressed her parenting time expectations should Ms. Symonds be granted primary care of Enrique.

[98] I order the following parenting time and arrangements:

- a. Ms. Macias shall have in person parenting time with Enrique at least five times each year specified as follows:
  - i. at least one month each summer (Ms. Macias may select the month she prefers each year but must do so no later than May 15 of each year. If Ms. Macias does not indicate her preference by that date the one month will be the month of July)
  - ii. March break annually
  - iii. in even numbered years, the first seven days of the Christmas school break, which seven days shall extend to at least December 26<sup>th</sup>; in odd numbered years from

December 26<sup>th</sup> until the last day of the break before school recommences in January

- iv. Easter weekend on odd numbered years
- v. One other long weekend each year.
- b. Ms. Macias must pay for parenting time travel costs.
- c. Ms. Macias may have additional in person parenting time as agreed with Ms. Symonds.
- d. Ms. Macias will have unrestricted phone/virtual contact with Enrique as arranged between she and Enrique.
- e. Mr. Symonds may have parenting time with Enrique as arranged between he and his mother provided that parenting time does not conflict with the above noted parenting plan.

## **8 Decision making**

[99] With respect to decision making, Ms. Macias proposes she:

- a. Would meaningfully consult with Ms. Symonds on all major decisions involving Enrique



- b. Would defer to the advice of the medical or educational professional involved when she and Ms. Symonds do not agree, and
- c. Would have the final say when a professional is not involved.

[100] Ms. Macias agrees a third-party information access order should be granted permitting all parties to obtain information about Enrique directly from third parties.

[101] Ms. Symonds says she will consult with Ms. Macias and Mr. Symonds concerning all important decisions affecting Enrique and that after such consultations, if agreement is not reached, she should have final decision-making authority.

[102] Because she has demonstrated excellent engagement, insight, and responsiveness in respect of Enrique's medical care and educational experience, I grant Ms. Symonds final decision-making authority with respect to Enrique. Ms. Symonds must consult meaningfully with Ms. Macias and Mr. Symonds on all significant issues concerning Enrique before making a decision. Absent an urgent circumstance, prior to making any decision and in furtherance of the obligation to meaningfully consult, Ms. Symonds must permit Ms. Macias and Mr. Symonds an

opportunity to consider and obtain advice with respect to the decision in question, and Ms. Symonds must consider any alternate suggestion or information provided by Ms. Macias or Mr. Symonds prior to making a decision.

[103] If Ms. Symonds presents an issue to Ms. Macias in respect of which a decision is required, Ms. Symonds will provide Ms. Macias with her recommended solution by email and may proceed with that solution if she does not hear from Ms. Macias within three days of presenting the issue for consideration.

[104] With respect to daily decisions, the party who has care of Enrique according to the parenting plan will be the decision-maker.

[105] With respect to emergency decisions, the party who has care of Enrique according to the parenting plan will be the decision-maker, with the other party being advised as soon as possible about the emergency and any decisions made.

[106] Ms. Symonds must provide Ms. Macias and Mr. Symonds with all information received that could affect Enrique's physical or emotional health, his education, or his social development.

## **9 Child Support.**

[107] I have determined Enrique will remain in Ms. Symonds primary care and Ms. Macias and Mr. Symonds will have parenting time with Enrique.

[108] Ms. Symonds says that Ms. Macias should pay her child support, but the amount of child support should be reduced to \$150 per month because Ms. Macias' has to fund Enrique's parenting time travel costs.

[109] Ms. Macias says she could not afford to travel to see Enrique, or have him travel to see her if she is ordered to pay child support. Ms. Macias also says Mr. Symonds should be paying child support.

[110] I do not have sufficient travel cost information to determine if Ms. Macias should be relieved of her obligation to pay child support if she also must fund parenting time travel costs between Nova Scotia and Ontario. I retain jurisdiction to determine child support payable, in respect of Enrique, to Ms. Symonds. A conference will be scheduled to review this issue and determine next steps.

[111] If either party seeks costs, and the parties cannot agree, the parties shall file their cost submissions within one month of this decision.

Daniel W. Ingersoll, J.