

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

**Citation:** *Currie v. Currie*, 2014 NSSC 158

**Date:** 2014-04-29

**Docket:** 1201-067140

**Registry:** Halifax

**Between:**

Rosana Currie

Applicant

v.

Trevor Currie

Respondent

**Judge:** The Honourable Justice Moira C. Legere Sers

**Heard:** April 1<sup>st</sup>, 2<sup>nd</sup>, & 3<sup>rd</sup>, 2014, in Halifax, Nova Scotia

**Counsel:** Angela A. Walker, for Rosana Currie  
Linda Tippett-Leary, the Trevor Currie

**By the Court:**

[1] This petition for divorce was filed on June 21, 2013 by Rosana Currie. The Petitioner and Respondent Trevor Currie, married on June 6, 2007 and separated on June 11, 2013.

[2] There are two children born of this union; Philip Kenneth Currie [DOB: August 17, 2008] and Paulo Bueno Currie [DOB: March 24, 2013].

[3] All property matters between them have been decided by consent. They will be incorporated into the Corollary Relief Judgement and form part of the final court order.

[4] The remaining issues before the Court relate to the parenting plan that best suits the needs of these children and the corresponding child support obligations.

[5] The parenting plans each presented for short-term and long-term consideration are radically different.

[6] The mother wishes to move back to Brazil removing the children from the father in a substantial way; altering their current experience.

[7] The father opposes this plan. He will agree to a plan that proposes joint legal custody with a gradual increase in his parenting time to a shared parenting arrangement. He is prepared to respect the ages of the children and their current developmental status.

[8] The mother has been the primary parent in what appears, in some respects only, to be a traditional marriage. She has indicated she is able to stay in Canada as an alternate option.

[9] Other than an Emergency Protection Order granted June 11, 2013 there is no prior or existing order.

**Grounds**

[10] The Petitioner alleges physical or mental cruelty. The Respondent denies this and alleges that the Petitioner was emotionally abusive to him.

[11] In the event I find insufficient evidence to support such a finding, the parties ask that all matters be resolved and the divorce order be put on hold pending the full year separation required in accordance with Section 8(2) (a) of the Divorce Act.

[12] One has to read and cross-reference their individual affidavits to put these allegations in context.

### **History**

[13] The mother [DOB: March 25, 1970] is currently 44 years of age. The father [DOB: October 21, 1972] is 41 years old.

[14] The mother, at 29 years of age, made a conscious decision to come to Canada in 1999 well before the parties met. She remained here for three months, returned to Brazil for the specific purpose of studying, improving her English and applying for landed immigrant status in Canada.

[15] In 2000, at 33 years old, she returned to Canada for three months, tried to obtain employment and returned to Brazil to improve her position yet again.

[16] She returned to Canada in 2003 for good. She worked towards and received landed immigrant status and ultimately studied to become a Canadian citizen.

[17] The mother has a computer sciences degree obtained in Brazil in 1992. She is an IT specialist.

[18] The parties met in February 2004 through the Respondent's church. They broke up in June 2006. They married in Enfield, Nova Scotia on June 6, 2007.

[19] The couple held a marriage ceremony in Brazil as well. Ten of the father's family and church family went to Brazil to celebrate their marriage with them.

[20] The couples' first child was born in August 2008 and their second in March 2013 before the separation in June 11, 2013.

[21] The Petitioner describes the relationship as difficult from the beginning. She was unhappy in the marriage from early on, suggesting a separation in April 2008 and again in February 2012.

[22] The Petitioner accuses the Respondent of yelling at her, slamming doors and during one incident she says he shook her.

[23] The Respondent describes the Petitioner ranting at him for prolonged periods of time about his failed efforts at finding employment, his income, their finances etc.

[24] In February 2012 the Petitioner discovered a debt on a visa card in the Respondent's name. The debt, known to the respondent, incurred by his father in his business, was subsequently paid off entirely by the Respondent's father.

[25] Late the same evening the Petitioner told the Respondent she wanted a divorce.

[26] The Respondent recalls the incident differently. He said the argument started when his sister called. This provoked the mother into "a rage". "She started shouting at me to go here and to go there and would not stop. She was verbally abusing me non-stop. ... There were times that I was so put down by her I no longer wanted to live. I thought hell might be a better than living with the torment of my wife."

[27] She said her husband went down stairs to get a gun. She says he loaded the gun. He says the gun was unloaded. Given his knowledge of guns and the other testimony I accept his evidence the gun was not loaded and likely locked. He put the gun to his head and threatened to kill himself.

[28] She called friends who called his parents. They came to take him to their home. This marked the end of this troubled relationship.

[29] He describes the Petitioner as screaming as his family came through their door yelling repeatedly at his sister and threatening to scratch her cheeks.

[30] This was a serious incident although questionable whether it was histrionic rather than a serious intent to kill himself. It would have been very difficult without bullets in the gun.

[31] The couple began to work on the relationship through counselling and the Respondent agreed to remove all of his hunting guns from the house and place them in another residence under lock.

[32] The father admits that he lost control of his emotions, that he was devastated by the Petitioners wish to end the relationship, yet he says pushed to his limit with her screaming. He has since been counselled and he has some insight into how concerning and inappropriate his behavior was and how it could be perceived by others.

[33] The couple fought about financial matters. The Petitioner was confident in her income earning ability and wanted to and did purchase homes as an investment and other large ticket items for personal use. The Respondent was more conservative in his approach.

[34] Despite the counselling in June 2012 the Petitioner continued to contemplate divorce.

[35] In July the Petitioner discovered she was pregnant with their second child. She asked her church for assistance.

[36] Her pastor suggested the couple spend some time apart during the first trimester. The Respondent willing went to work in Alberta from September to December. She called him home to stay at home for the next three months due to the difficulty pregnancy.

[37] The Respondent was intent on keeping the marriage together. Equally clearly, early on the Petitioner was not satisfied in the marriage.

[38] The tensions between the two simmered, frequently exploded verbally and continued to escalate.

[39] The mother had a caesarian section and a difficult time after the birth of the second baby. The grandmother returned to their home. She and the mother slept in the same room with the baby. The grandmother remained in the mothers' bedroom administering to her and the child until the couple separated on June 11, 2013.

[40] On June 11, 2013 the mother approached the Respondent to discuss separation. They argued and he drove away. The mother slept together with the children and her mother in the back room. When the father arrived home they heard him "crashing around" the home all night. In the morning when he left the home she called to obtain an Emergency Protection order.

[41] The mother received an ex parte Emergency Protection order on June 11, 2013. She testified she was not really clear on what she was applying for at the time. She sought and received exclusive possession of the home and the father was served and removed. She testified that the triggering reason for her application was the fact that the Respondent was roaming around the house during the preceding evening making noise. She alleges she was afraid he might hurt himself or the children or her.

[42] The Respondent has abided by the terms of the order despite there being no ongoing order.

[43] Subsequently, the father has had overnight weekend parenting time with the oldest child and during the weekend, one two hour visit with the youngest. He has an additional two hour visit with both children every Tuesday and Thursday.

### **Cruelty**

[44] The Petitioner testified she felt intimidated by the Respondent and demeaned by his comments.

[45] The Respondent recalls many arguments where the Petitioner was yelling at him to earn more money and demeaning his abilities.

[46] The incident of physical abuse she cites allegedly occurred in 2008 when she asked him to look for work as she was leaving the home to her work.

[47] An argument ensued and she alleges the Respondent got mad yelled at her, grabbed her and shook her. At this point she was five months pregnant.

[48] He places this incident in the context of an argument that continued for days. He said when this incident happened the Petitioner had been yelling and screaming at him for days. At paragraph 108 of his affidavit he said:

“I could do no right in her eyes after I got it though my head that I was never getting anywhere I attempted to leave. In was in fact Rosana who put her hands on me and blocked the door and continued to yell at me. There was a tussle between us but I was certainly not the aggressor.”

[49] The Petitioner responds to the Respondent's allegations by admitting she did raise her voice on occasion. "I did not "scream" or yell. I speak with animation and I use hand gestures (non-threatening) and facial expressions, which is common in Brazilian culture. I "talk "with my hands ".

[50] On the totality of the evidence, the third party description of the parties and the contextual sense of the evidence I do not find sufficient evidence to conclude that either party treated each other with cruelty of a nature that rendered intolerable the continued cohabitation of the parties.

[51] The Respondent presents as more passive than the Petitioner. She appears to be more assertive, more financially adventurous on issues of investments, employment, and travel.

[52] There is no visible sign of her intimidation in court and on the evidence. If the respondent intimidated the petitioner it was invisible to those around them.

[53] As I review the entirety of the evidence and consider the issue of whether or not there is evidence of intimidation I note the following:

- The Respondent was reluctant to get into buying and selling homes for profit. He was concerned that their finances were too precarious. He said the Petitioner told him she was confident in her abilities and knew what she was doing.
- The Respondent acquiesced. Both he and his father were involved in the necessary renovation and repairs outlined in paragraphs 118, 230, 232, 234, and 238 of his affidavit. The sale of one of the properties created a profit of \$37,000. The Petitioner was given \$35,000 of the profits to allocate to various expenses.
- The Respondent wanted to wait a few years before having children. They married June 2007. Their first child was born August 2008. The Petitioner was 38 and the Respondent 35 when their first child was born.
- The Petitioner wanted a new car. The Respondent was concerned about their finances. His reluctance did not stop her from buying the car.

- The Petitioner wanted the Respondent to remove himself from his family involvement. The Respondent, although reluctant, approached his parents to comply with the Petitioner's demand. He was prepared to do so to support his marriage.
- The Petitioner wanted the Respondent to pursue employment out west to augment the family finances. After he did so, she asked him to leave Alberta to return home to stay with her for January, February and March of 2013 during the third trimester of the pregnancy. He willingly complied with this request.
- The Petitioner wanted to go to Brazil after the family difficulties and the Respondent was reluctant and feared she would not come back. The Petitioner initiated court action to achieve what she wanted.

[54] This does not appear to be a situation where his reluctance deterred her from following her own choices.

[55] This does not appear to be a dynamic where the Petitioner was threatened or intimidated by the Respondent's views or reluctance.

[56] The couple did not agree on these and many other issues. The pattern of conduct appears to be a general acquiescence by the Respondent or acceptance that the Petitioner's view would carry the day. Indeed the Petitioner complained the Respondent was old fashioned and wanted to control the finances.

[57] Perhaps he was. However it appears he did not control the finances.

[58] They both come from a similar religious background although from different cultures. This did not seem to impede the Petitioner's progress in achieving her goals, in investing as she saw fit, maintaining a condo in Brazil, or entering into arrangements she thought were appropriate.

[59] During the marriage the Petitioner withdrew from his family and after the separation from his church. She was offered help to select a new church from the pastor and she declined his help.

[60] Although the Petitioner believes everyone was against her there is no evidence to support this.



[61] These parties were apparently not suited to each other from the beginning. Despite the Respondent's wish to try to make the marriage work the Petitioner's was consistent in her belief that separation was really the only solution that would satisfy her and permit her to move on.

[62] They simply had different expectations of marriage, child rearing, each other and themselves. They were irreconcilable differences and there is no possibility of reconciliation.

[63] It is the Petitioner's view of parenting that has been established within the home. She wishes to have her partner earn a higher level of income. She wishes to and has taken steps to divorce herself not only from the father but from his family and from the church in which she became involved with him in Halifax.

[64] The granting of the Divorce Order must wait until the parties have been separated at least one year from the date of determination.

### **Parenting Issues**

[65] The best interests test remains the paramount consideration in matters before the Court where custody and access are at issue. (*Young v. Young* 1993 CanL11 34)

[66] There is no prior consent or court order concerning the issue of custody except for an Emergency Protection Order granted on June 11, 2013.

[67] The Court must be concerned with reviewing the issues set out in the Divorce Act Section 16(8) and (9) and 17 (6) as well as the considerations enumerated in *Foley v. Foley* 1993 CANL11 3400 NSSC and *Gordon v. Goertz*. 1996 CANL11 191 S.C.C.

[68] Thus I am considering which plan or combination of plans best suit the children's best interests in the context of this divorce hearing.

[69] Interwoven with these considerations is the request of the mother to move permanently to Brazil taking the two children, who are the subject matter of this proceeding, with her.

[70] Unless the father can visit Brazil with a frequency that will maintain and sustain the parental relationship, the mother has candidly testified that she will be

unable to bring the children to Canada for a visit until 2015, some 14 months after her intended relocation to her family home in Brazil.

[71] Best interests' evaluation includes a consideration of the following factors:

1. Statutory direction;
2. Physical environment;
3. Discipline;
4. Role model;
5. Wishes of the children;
6. Religion and spiritual guidance;
7. Assistance of experts;
8. Time availability of a parent for a child;
9. Cultural development of a child;
10. Physical and character development of a child by such things as participation in sports;
11. Emotional support to assist in a child's development, self-esteem and confidence;
12. Financial contribution to the welfare of the child;
13. The support of the extended family;
14. The willingness of the parent to facilitate contact with the other parent;
15. Interim and long range planning;
16. Financial consequences; and,
17. Any other relevant factors.

[72] We know that there is no legal presumption in favour of a custodial parent. It is the interest of the children that is the primary focus as opposed to the rights of the parent.

[73] The Supreme Court of Canada has confirmed that a rights based approach is not the proper approach to assess issues of best interests in custody matters .

[74] There are a number of elements outlined above which for obvious reasons are not relevant or pertinent in this situation. For example, we do not have access to a reliable method of determining the children's wishes, nor do we have expert evidence to assist in this case.

[75] I will now review the relevant factors while acknowledging they are not exclusive.

[76] Statutory direction in the Divorce Act

Section 16 (8) and (9)  
Factors

(8) In making an order under this section, the Court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.

Past conduct

(9) In making an order under this section, the Court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.

Maximum contact

(10) In making an order under this section, the Court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.

[77] Section 16(10) is relevant in this case because the mother's plan virtually signifies the end of a meaningful and physically close relationship between the father and the children. The mother's willingness to facilitate creative options and opportunities becomes a critical aspect of her mobility request.

**Physical environment**

[78] I have very little relevant evidence on the physical environment in which the children would find themselves. The family has a cottage on the beach in Brazil. Her mother, uncles, aunts and cousins live in Sao Paulo. The mother owns a condo in which the maternal grandmother lives and her family have another they offered to her until she can get on her feet.

[79] The mother testified that when she came to Canada she experienced welcome relief that she was able to visit and stay in a country where she felt so safe and secure.

[80] Her appreciation of this and her perspective is obviously molded by her experiences in in Sao Paulo, Brazil.

[81] She admits expressing to her husband and his family her fear of child kidnapping in Sao Paulo, the danger of armed robberies and the personal and family incidences that created an absence of a feeling of safety and security in this geographical environment.

[82] The father attached some web site information about violence in Brazil.

[83] She admits that child kidnapping was an issue in Brazil with which she had prior concerns although she explained in this proceeding the fear was more prevalent with the wealthy rather than middle class families.

[84] These former expressions of fear and concern have been down played by the Petitioner in this proceeding.

[85] I am not in a position to make findings of fact based on the website information. The evidence I can consider is the exchange between the parties in better times.

[86] I have no statistics or objective criteria with which I could compare the safety and security of Nova Scotia with Sao Paulo. That is not to say the fear has no basis rather that I am left only with historical revelations and the parties subjective testimony.

[87] The mother does not now express any reservations about returning to Brazil to live with her children.

[88] In Nova Scotia the father lives in a small close church community with his family, extended family, the Petitioner and his children. It was a community chosen by the Petitioner as well when she decided to marry and have children.

[89] The pictures both parents have tendered show no obvious deficiencies in the physical environment with which I could draw any adverse conclusions about their

immediate physical environment. The picture depicts very healthy happy children surrounded by both extended family members.

### **Discipline**

[90] The father has been described by everyone but the Petitioner as soft spoken, polite, laid back and a hard worker. The evidence supports he was generally compliant with the mother's wishes and directions even when he did not agree with her. At her request and against his own wishes he spoke to his family and asked them to stay away for a while. The evidence does not support that he would be the primary disciplinarian in this family.

[91] The mother is the one primarily responsible for the child care arrangements. She appears to make the decisions and when her mother is present they both seemed to have more authority in the household as regards the children than did the father.

[92] Discipline however, did not seem to be a large part of the children's family life. Nor was this a strong issue in these proceedings.

[93] The children are certainly the centre of everyone's attention.

### **Role Model**

[94] The Petitioner and Respondent are family centered.

[95] Both belong to a Pentecostal church community. The mother was brought up in a similar church community in Brazil.

[96] The father has a grade 12 high school education. In 1997 the father graduated from bible school with a major in spirit filled living and a minor in counselling, pastoral studies and evangelism.

[97] He has a licence to sell insurance. He has a certificate in Residential Building Damage Estimating (1991). He is a drywaller by trade and has driven trucks, worked in construction and other such job opportunities with his father. He has been employed in the Alberta Oil Sands.

[98] The work that he does now has not altered from that which he did when they met and before marriage.

[99] The mother has a university degree from Brazil in computer science (1992). She has had solid employment in the information technology sector both in Brazil and in Canada. She continues to be employable and is returning, after her maternity leave, to her current employment which has good health benefits for her and the children. During the course of the hearing she was advised that she also has employment to return to in Brazil. This too has good benefits for her and the children.

[100] Her income seems to be the principle consistent income.

[101] The children have been born into a religious community and have been exposed to similar communities when visiting Brazil.

[102] The mother and her mother are obviously a part of their own church community.

[103] The mother has removed herself from the father's church community. While the pastor offered her assistance she declined his aid.

[104] Except for the conflict when the parents are together, both parents provide a diversity of modelling to the children.

### **Religious and spiritual guidance**

[105] The parties speak about their close connection and family values.

[106] In this family the Pentecostal church plays a central role. The paternal grandparents and extended family are long-term members of this community. The father is in a community familiar to the children. His parents are an integral part of the fabric of that community.

[107] The mother left her church community in Brazil. When the mother came to Canada she met her husband through his church community.

[108] Despite the mother's testimony I find that the evidence supports a conclusion that the Canadian church members welcomed and have been supportive of the couple.

[109] They opened their arms, their lives, including their spiritual lives, to welcome the Petitioner. Subsequent to the separation, the Petitioner suggests that this small community has now excluded her.

[110] Now that she is estranged from the father she has chosen to leave this church and is now a member of a similar community outside of the father's and extended family's church.

[111] Her church members assisted her and her father-in-law in completing renovations to their homes.

[112] While the father has studied within the church the children will have access to strong spiritual guidance with both families.

### **Time availability of each parent**

[113] Both parents work outside the home except for the mother's maternity leaves.

[114] On one occasion she was in another province and during that time the Respondent and the grandmother were home.

[115] The grandmother assisted to provide hands on child care for the children. The Respondent advises that when he offered help to the grandmother she declined his assistance.

[116] The oldest child is in daycare. The mother is returning to work. The youngest will have to be in daycare or if in Brazil while the mother is working with the grandmother while she is still able.

[117] The maternal grandmother has been a central source of family childcare. According to the father while the maternal grandmother was living in his home she was in charge.

[118] The mother is the primary parent when her own mother was not present. The father was not expected to take over in the household tasks however he was expected to work outside.

[119] In that sense this was more of a traditional marriage where the mother and her mother in the household had the authority over the children.

[120] With the oldest child the father has an established relationship but with the youngest the mother has maintained primary care because she breast fed the child and because she and her mother maintained responsible for the care of this child. Now that this child has ceased being breast fed and the mother is returning to work, the Petitioner is prepared to allow the father more extensive contact with the infant child.

[121] The father wishes to move to a more shared parenting arrangement with more extensive contact recognizing a transition to effect this will take time. He wishes more extensive, less restricted parenting time.

[122] The mother and father argued about finances. She wanted him to earn more money and have a better career for all of them. He had been offered a job at the same time the mother had to go to Moncton to work. He turned down that job to be at home while she was in Moncton.

[123] He found work in Alberta. While she insisted he attempt to find more profitable work during this employment she asked him to come home and be present during the last trimester of her latest pregnancy. She advises they agreed he could go back once the baby was born.

[124] The Respondent is the parent with more flexible hours. When it was required he was on call to drive or attend or find an alternate solution to child care or child related problems at the mother's insistence or when the mother thought she needed his attention the father was called.

[125] Given his work schedule and his work with his family and their flexibility and support he potentially has more employment flexibility and is less rigidly scheduled than the mother.

### **Cultural development of the child**

[126] The oldest child is bilingual.

[127] None of the father's family speaks Portuguese and few of the mother's family speak English.

[128] These children have the advantage of exposure to distinct cultures. They have been blessed with families that maintain their contact and ensure the children are culturally connected to both sides.



[129] Certainly the father's family are supportive of the children's cultural development and have been welcoming to the children in every way permitted by the mother and available to them.

[130] The mother's family have maintained contact with the children while they are in Canada. Her mother has been loyal, supportive and active in her role as grandmother.

[131] The evidence I have of the mother's family in Brazil is one that offers many occasions to connect with their cultural reality both in Canada and in Brazil.

[132] There is more possibility of the children maintaining their Brazilian contacts if they live in Canada than their Canadian connections if they live in Brazil.

[133] This is due to the fact that finances and language would limit the father's ability to connect.

[134] The mother and grandmother have not had much good to say about the father and have not endorsed in principle the need for the children to be connected to their father. Maintaining a connection with his children in Brazil will have its' inherent limitations.

[135] On the other hand his family, despite the mothers' efforts to distance themselves, have continued to express strong support for the children and endorse the need for a balanced approach that would endorse both parents importance to the children.

### **The physical and character development of the children by the availability of extracurricular activities to enhance their development experience**

[136] There is nothing in either family that would give one an advantage over the other in this category.

### **Emotional support to assist in the development of the children's self-esteem and character development**

[137] Each parent and extended family would see to the opportunities to enhance the children in this regard.

### **Financial contributions**

[138] The parties have reached agreement on all issues between them. The Court is not called upon to settle the division of property.

[139] I refer to the financial issues only as it relates to the assessment of this element set out in *Foley v. Foley*.

[140] The Respondent owned property on the Lucasville road and a family camp near Antigonish prior to marriage. The Petitioner owned a condo in Brazil before marriage. She bought a property while in Canada and that was ultimately fixed up and sold.

[141] During their marriage they purchased two homes jointly, one the matrimonial home and one investment property.

[142] While the mother and her mother will not readily admit to the work done by the paternal grandfather and the father in the repairs to these houses the father and paternal grandfather assisted in completing the work on these homes.

[143] The Petitioner does not identify this as a valuable contribution in kind by the Respondent or his family. It is however, an obvious financial contribution to the marriage.

[144] The Court has their historic income figures and it is clear that the mother is the principle financial provider, more capable at this moment of providing a higher level of financial security. Child bearing and maternity leaves have temporarily diminished her income. However, there has been a steady climb in her income earning capacity.

[145] The mother was an IT specialist when she settled in Canada well prior to the marriage and the children's birth. Given her speciality, she has opportunities in Canada and Brazil. She advised that this speciality was a strong factor facilitating her immigration to Canada.

[146] In November 2003 she began working in Halifax increasing her income steadily to her current income of \$66,000 a year.

[147] The father is in construction and his opportunities depend on locations and season. He has demonstrated an ability to increase his income. Having said that, in

the care of the father's family the children are not likely to want for any material support to meet their needs.

[148] The mother admits that the father began in October 2012, while still married, renting out and paying to her \$800 a month for his Lucasville property. He made her car payments of \$450 and since the rent for the Lucasville property is being paid to the Petitioner he has to pay the mortgage and other expenses associated with that property.

[149] Some of the financial difficulties that were present during the marriage were exacerbated at separation due to the number of homes they had to maintain and try to sell.

### **The support of the extended family**

[150] Both parents come from what appears to be a strong, loving, committed, and dedicated extended family.

[151] While I have had the opportunity of hearing and seeing the kind of hands on support the father's family offers and only had occasion to hear and see the grandmother testify, the evidence suggests that she too comes from an extended loving family who hold children as precious members around which they congregate.

[152] Clearly, other than the maternal grandmother, the father's family have had more opportunity to be the more visible presence in these children's lives.

[153] The mother has had extensive opportunities to visit and stay at little cost with her relatives in Brazil. She has taken extended vacations in Brazil. The children have been afforded the opportunity to meet with and become connected to her extended family. They have had the loving support of the maternal grandmother at important times in their lives.

[154] The reverse of this would not be true in that the mother says that if she is permitted to move to Brazil she will not be able to come to Canada for 14 months so the extensive contact they had with both families will cease. This will be a significant loss to the children.

[155] The father has been ever present in the background. The paternal grandfather has performed countless hours of maintenance on homes purchased by the mother

and father to assist them in turning a profit. The grandfather and the paternal grandmother clearly are intricately involved in the support of the children's lives through their son and as a background presence.

[156] Their involvement has been restricted and terminated at times at the mother's express wishes as expressed to the pastor of their church and to their son directly.

[157] The father's sister as well has had to minimize what support she offers her brother because the mother tried to reconstruct the ties between the son and his family to reposition his focus more exclusively on her and her immediate family home.

[158] This is in stark contrast to the mother's facilitation of extensive contact between her and principally her mother. While it is quite understandable that she would rely heavily on her mother during childbirth and to support her as she moved through her family crises, the close family connection and reliance is not as easily tolerated by her when it comes to the paternal family.

[159] In 2005 for three months and in 2006 for five months the maternal grandmother came to visit her daughter in Canada prior to the marriage.

[160] In 2008, when their oldest child Phillip was born, the maternal grandmother came to stay with the couple for six months including staying with her for ten days while she was in the IWK after the birth. She continued to stay at home while the mother was on her maternity leave to assist her with all the functions normally associated with a new baby.

[161] In 2009 the maternal grandmother came for seven months, two months in 2010 and four months in 2011.

[162] She returned at her daughter's request in 2012 for a four month period when the mother returned to work and was stationed for a few months in Moncton.

[163] In 2012 the mother and oldest child also went to Brazil.

[164] The maternal grandmother returned to Canada to stay with the couple for six months in 2013 and mother and child spent one month in Brazil.

[165] In 2013 the maternal grandmother came to Canada and stayed up to and including the hearing in this matter in April 2013.

[166] When the grandmother was in the home, the role of the mother and the grandmother was to look after matters inside the home and the role of the father was to look after matters outside, such as snow plowing, shovelling, repairs, etc.

[167] The grandmother speaks Portuguese almost exclusively and the conversations in the household between the mother and the grandmother were always in Portuguese.

[168] The mother and grandmother took over all household tasks associated with the children.

[169] The maternal grandmother has not one good word to say about her son-in-law. She simply states unequivocally he did not complete any of the house hold tasks while she was there.

[170] She does not comment on any work he or his father performed outside the home and in fixing up the homes in her daughter's name for sale for profit. She did not mention the plowing, shoveling and other home repairs he and his father did.

[171] Although she began to come to Canada frequently and for long durations nine year ago when she was 57 years old she testified that now at 66 she intends to stop this travel and visiting, wants to stay at home, go to her own church and see her own doctor for medicines she cannot receive in Canada.

[172] One can understand why she might want to curtail her travelling at 66 if she feels unable to keep the pace of living between Canada and Brazil. While the grandmother offers herself as a child care provider, one can also understand how that offer is an interim solution and one which will have to be rethought as a long term plan if what she says is correct. I have no reason to believe it is not.

[173] I did not get a sense from either the mother or maternal grandmother of any unconditional willingness to facilitate a relationship between the children and their father.

[174] The mothers' Aunt Fonseca tendered an affidavit to speak to the close relationship that exists in the mother's extended family. Both she and her husband (the maternal grandmother's brother) acknowledge that since the Petitioner came

to Canada they have been able to maintain their close relationship. They speak over the telephone and Skype once a week. She has visited the Petitioner twice in Canada. They had a breakfast gathering at another relative's home to watch the Petitioners ultrasound in real time while she was carrying their oldest child. Both she and her husband came to Canada for the oldest child's baptism. They make efforts to spend time together when the mother and children come to Brazil. She and her husband are prepared to support the Petitioner and children by offering them a home for as long as necessary.

### **Different Perspectives**

[175] The mother and the grandmother adamantly deny any contribution by the father in the children's lives.

[176] There is some truth to the father's assertions that there is a mixed message being delivered. They are responsible for the care of the children inside the home and he is excluded from decision making.

[177] Having established this pattern in the household they now fault the father for his lack of participation indicating firmly that he did not participate in caring for the children.

[178] The mother also accused the father of failing to pay any of the household bills. She alleges he was unable to find well paid work. She alleges even when not working he did little to nothing at home.

[179] She says it was her mother who provided the majority of support she needed. Her mother slept in her room with her through much of the time after the birth of the second child.

[180] The Petitioner does admit the Respondent did assist with bath time and bedtime routines but she suggests he was not comfortable with this. He was confused about what to put on the children to wear.

[181] There is certainly a different picture painted of him than that painted by the mother and maternal grandmother.

[182] Neither testified that he did anything yet the evidence of those who have known the Respondent for a considerable period of time speaks of his work ethic.

[183] Aside from the Respondent's family who understandably testify to his good character, Ms. Faulkner is a friend of both the mother and father.

[184] She was an EPA in the Halifax Regional school board for 18 years. She is well acquainted with the Respondent and his family for over 20 years. She describes the Respondent as hardworking, quiet and focused on his children.

[185] The Respondent testified that he lent \$5000 to the Petitioner for a property transaction before marriage. She repaid him.

[186] The Petitioner was interested in buying and selling houses for profit. The grandfather and the Respondent were involved in construction. The paternal grandfather acknowledges he used the Respondents credit card with his consent to buy supplies. He advises that he worked hard on the various houses both the parties bought and sold.

[187] Along with handing over the rent money and her car payment the father paid the cell phone in the mother's name.

[188] He invested his efforts into getting the apartment in the matrimonial home ready for renting to Ms. Faulkner only to have her evicted by the mother two weeks later.

[189] The father believed they were working out the issues in their marriage.

[190] He paid the expenses necessary to maintain his rental property.

[191] He has welcomed all of her family into their home.

[192] After separation the Petitioner called him to shovel her driveway. He was on his way to work so he called someone and had them shovel the driveway.

[193] He responds to her various requests including on January 31, 2014 to take their oldest child with a friend to the movies. The children have had overnight visits with their father.

[194] She called him into the home after separation to repair the washer and install a shelf.

[195] He advises that he was self-employed so he could be there when the Petitioner wanted him. He understood the importance of her job to her. He eased

his oldest son into day care and when he had to stay home due to illness stayed home with him.

[196] He maintains he looked after everything outside the home and offered to help inside the home.

### **Other relevant factors**

[197] The process of deciding parenting regimes is made more difficult because we are creating a futuristic plan based largely on past behavior.

[198] There is evidence the parents are able to meet the children's needs both in a formal plan and as a result of their evidence indicating their wishes.

[199] There are some significant frailties with the mother's plan to move to Brazil.

#### 1. Moving home

[200] The Petitioner proposes a significant move back to her home. Her past behavior illustrates a desire to permanently leave Brazil.

[201] Before the Respondent was on the scene she had already decided to immigrate. She went to considerable pains to illustrate her dedicated interest in becoming a Canadian citizen.

[202] She entered Canada on at least three occasions after returning home to improve her facility with the English language, her eligibility and employability. She made a significant decision to move from her past, her culture the security she describes her family will provide for her and the children.

[203] She was not deterred by her connections to her family.

[204] Her description of what Brazil now offers her can be classified as providing her with transitional, emotional and financial support and day care providers.

[205] Once that transition is accomplished will Brazil hold the mother's interest?

[206] I am not satisfied that her description of what she wants to do by returning home is congruent with her dedication to realize a goal of immigrating. She is employable internationally.



[207] Certainly she now has two children but is that sufficient to fundamentally reverse her previous decisions?

2. Premature decision

[208] This couple have barely separated. They have not yet completed a full transition from the turbulence of separation and divorce. These parties have just entered that period of time during and post separation when everything is unsettled and there are significant adjustments.

[209] Not two weeks after both the Petitioner and Respondent invited Ruth Faulkner to move into their downstairs apartment the Petitioner informed the home was to be sold.

[210] She informed Ms. Faulkner that this plan to sell the house and the separation was not in her plans before Ms. Faulkner moved into the home. If that is true it was a recent plan.

[211] This couple are still in a transitional period. Making significant decisions to effectively cut one parent out of childrearing at this stage is premature.

[212] Many parents at or after separation learn new skills and adjust their thinking and their contribution to parenthood. Many parents including fathers become more involved or involved in a different way post separation.

[213] Ideally post separation a new parenting strategy takes time to evolve and is either agreed upon or imposed, more fully implicating both parents peacefully in the day to day nurturing and care of children.

[214] The legislated goal is to preserve for the children as much contact as possible in accordance with their needs and the strengths of the parents. Other than best interests this maximum contact provision is the only legislated factor.

[215] The process of settlement is to design a plan that best involves the parents in a strategy of parenting that keeps both in close connection to their children, providing that which each is best able to do for their children, minimizing the loss of separation and divorce to the extent possible.

[216] When settlement is not reached it is the function of the judge to focus on the children's right to maintain healthy connections with their parents and to preserve what can be preserved.

[217] It is too simplistic to suggest that the judge must choose one plan over the other.

[218] A more profound look at the needs of the children might result at one time, in a combination of both parents strategies to achieve the parenting strategy that suits the changing ages and stages of development of the children.

[219] This is a fluid process that must keep pace with the short-term and long-term needs and best interests of the children. It is not a rigid one time focus. It is a changing dynamic.

[220] The parenting schedule proposed by the mother may have been greatly influenced by her heritage and the supports she expected and received from her mother despite the cost.

[221] Her parenting proposal drafted and signed on June 20, 2013 anticipated that the children would be in Canada and that while the youngest child was breastfeeding the father would have the youngest in his care only three times per week. For two hours on Tuesdays and Thursdays from 5:00 p.m. to 7:00 p.m. and on Sundays from 9:00 a.m. to 11:00 p.m.

[222] She suggested for the oldest child the father attend on Tuesdays and Thursdays for two hours to have the sibling contact and stay with his father for a full day on Sunday from 9:00 a.m. to 7:00 p.m.

[223] This is hardly a generous schedule and certainly not one that facilitates a father nurturing his sons, being present to them on a daily basis and participating in bath and bedtime routines.

### 3. Intent to minimize the father's influence

[224] On the totality of the evidence, I am not convinced that this mobility plan is simply not an effort to exclude the father in early childhood nurturing. This plan allows the Petitioner to strike out on her own again; to return to her mother's home to have complete authority over the children without interference.

[225] For the children this may well be life-changing and irreversible.

[226] I am also not convinced that the mother will facilitate or maximize the connection between the father and his sons.

[227] Both during the marriage and after there are clear attempts to minimize the influence of the father and his family and maximize her family connections.

[228] At best, this plan to move permanently suggests a total lack of insight into the statutory obligation to maximize healthy contact and fails to recognize the value the father's connection to the children's development.

[229] There are circumstances subsequent to separation where the father is on the one hand called in to be present and on the other ignored, where adding access or parenting time or changing schedules is arbitrary.

[230] For example: informing the father on the afternoon of the parent teacher meeting about the meeting. Now that they are separated the Respondent will be responsible for accessing that information directly to keep him informed of their school activities.

[231] On March 12, 2014 the father asked for additional time with both boys. The mother informed him the oldest was not feeling well. She advised when the youngest woke up he could see him. Later he called again and she refused to allow the father to see the youngest because it would upset the oldest if he could not go as well.

[232] At 5:15 p.m. before a scheduled access visit the Petitioner texted the Respondent advising the child had a doctor's appointment and cancelled the visit. He offered to go to the doctor with the child and she refused.

[233] There are many instances when the schedule is changed for reasons that would not be permissible under a court ordered regime.

[234] Expecting the father to act independently from his family when both families come from a culture and religious community where family involvement is encouraged and her own extended family involvement was substantial is unrealistic.

[235] She has moved away from his family involvement and the church in which he is a participant and move to another church. One might better understand her perspective if she had the same expectation of her own family

[236] If she were she in Brazil and continued to insist his family stand back and he exercise his contact alone as in past his contact would be seriously impeded.

[237] The evidence supports an intent to resist efforts to keep the children not only connected to the father, but to his extended family. They too are a part of their heritage.

[238] The evidence does not support a finding that the Petitioner was submissive or victimized by the father.

[239] The Petitioner has the financial capacity and did make serious decisions about purchasing and selling homes despite the father's concern they were in over their head. She had an income and felt able to engage in this activity.

[240] She invited her mother into their home apparently without any objection from the father for extensive periods of time.

[241] She insisted the Respondent's family be less involved in their life and took steps to speak with his pastor, call a meeting of his family and convey to the paternal grandparents they were to stand down to allow their son more independence.

## **Conclusion**

[242] The mother's principle suggestion as to how to maintain a connection between the father and the children is through Skype four times a week. While this may be adequate for vacation or short term absences, as a long term solution, this lacks substance.

[243] Weighing the totality of factors at this stage of the children's lives the plan to return to Brazil with the mother removes more from their lives that it adds to them.

[244] There are more factors that weigh on the side of having the children remain in Canada close to the father and mother than having them permanently removed to Brazil.

[245] That is not to say a mobility application, if the mother is still interested, would fail in the future. But the proposed move must be in the best interest of the children. The mother's wishes and comfort are not the dominant factor. Neither is the father's comfort and happiness the primary focus.

[246] The evidence supports the conclusion that the mother has options, solid employment prospects, has a plan of sorts if she remains and she will if the children are not entitled to go.

[247] She is a competent, intelligent and capable adult. Her family have shown a desire to remain connected with her and the children.

[248] The fathers' family have indicated a willingness to facilitate that contact.

[249] These conclusions are not to suggest either one or the other parent is at fault, is right or wrong. It simply illustrates that this was a marriage of two people whose expectations, goals and intentions were too diverse to be compatible without a willingness to invest in the marriage and find common mutually acceptable and fulfilling roles.

[250] The children's best interests must now be considered paramount and a parenting strategy crafted which diminishes their losses and maximizes the advantages that they can gain from the two parents they have available to them.

[251] The father must now become informed on his own or with the assistance of family. He must become educated in the ways of parenthood in a more complete fashion and not that designed by his marriage.

[252] He presents as capable of communicating, willing, and able to take on a larger role in the life of his children. He has the strong support of his family just as the mother did when she was learning to parent and the involvement of her mother was significant.

[253] To permit the mother to move now without allowing the father an opportunity to provide for his children robs the children of his presence, his contribution and his extended family's contribution to their lives.

[254] With the maternal mother reducing her involvement in the children's lives if she comes to Canada less frequently there will be a gap created which the father will have the opportunity and must fill.

[255] At this point the mother has the ability to keep the children connected to their Brazilian connection if she remains in Canada.

[256] The mother will not be permitted to relocate the children to Brazil at this time. The evidence leads me to believe that she has an alternate plan and will not relocate should the children not be able to relocate with her.

[257] The children will remain in the jurisdiction of Nova Scotia and should the mother remain here, in her primary care in a joint legal custody arrangement.

[258] I do not believe that would be in the best interests of the children at this time should she leave herself to return to Brazil.

[259] I accept that she will not leave. Should she decide to do so this will trigger an application to vary and the parties will come before the Court to put a plan in place for her access to children should they be in the primary care of the father.

[260] Should it be necessary to place the children in the primary care of the father there is evidence that he has a suitable residence himself with sufficient family support and the ability to inform himself sufficiently to provide care for the children in a transition from the mother to the father.

[261] His parents and sister and his extended family have provided him the support he needs and he is living in the parent's home.

[262] The parents shall be responsible to consult one another on all major issues relating to the children's emotional, educational, spiritual and physical welfare and they shall seek the advice of experts should they disagree.

[263] They both love these children and want what is best for them. They are both intelligent and able to find a peaceful method of resolution. They shall have to consent to major issues.

[264] While in the care of the mother she shall make the day to day decisions and while in the care of the father he shall make the day to day decisions.

### **Weekend parenting time**

[265] The father shall have parenting time every weekend with his older son from Saturday at 10 am to Sunday at 6:00 p.m. commencing immediately.

[266] The younger son needs to be transitioned into an appropriate schedule gradually.

[267] For May and June 2014, the first two months, the youngest child shall be with the father during his weekend parenting time with his older son from 10:00 a.m. to 2:00 p.m. on Sunday.

[268] The mother will pick her youngest son up at two for this transition. All other transportation shall be provided by the father.

[269] This time shall be extended to 10:00 a.m. – 4:00 p.m. for July and August 2014. Again the mother will pick her youngest son up for these two months.

[270] For this transition the parenting time shall take place in the grand parent's home.

[271] Starting in September 2014 the youngest child shall join the oldest child for overnights with his brother from Saturday at 10 to Sunday at 6:00 p.m.

[272] For the first month of overnights this shall take place at the grandparent's home just to increase the comfort level of the youngest child.

[273] Should the parents agree, the youngest may join the overnights earlier.

### **Weekday**

[274] During the week the father shall have parenting time with the children twice weekly from 4:00 p.m. – 7:00 p.m. on Tuesdays and Thursdays. The children shall have supper with the father before they are returned home.

[275] The intention is to allow for a consistent schedule an increase in parenting time as the youngest becomes familiar with the routine.

[276] The intend is also to permit the oldest child to have overnights during the week throughout the summer and moving forward.

### **Summer**

[277] In the summer the father shall have two weeks including overnights, not consecutive, with the oldest starting at 10 am each day or such earlier time as

agreed upon by the parents that better facilitate the mother with her employment schedule.

[278] During this time he may also have day time parenting time each day with the youngest. He will return the youngest to his mother's home by 5:00 p.m. or otherwise as agreed in advance.

[279] Should the parents wish to change the schedule to every second weekend they must agree in writing in advance and they must within three months seek a change in the court ordered schedule.

[280] Each year by May 1st, on a revolving basis, each parent shall notify the other of their intent to take vacation. This year the father shall have first option in even numbered years.

[281] Each year commencing in the 2015 year and odd numbered years thereafter during the summer, should the mother choose, she may have one month during which she visits with the children in Brazil.

[282] She shall advise the father when she has first option by May 1st. She shall be obliged to provide telephone and Skype contact between the children and their father at least four times a week.

[283] She shall provide the Respondent with copies of their airline tickets both to and from Brazil.

[284] She shall be further advised to provide working contact numbers to the father and ensure that such contact is facilitated as she suggested was possible.

[285] The order will reflect that Nova Scotia retains jurisdiction over these children until further order of the Court.

[286] I suggest a review at either parent's motion in the fall of 2014 to adjust the schedule, work out any difficulties and move from the transitional schedule to longer term schedule.



## **Child Support**

[287] The father has committed to pay child support that exceeds his current income. He has suggested an amount of \$500 per month which is well in excess of the table amount for last year's income.

[288] His income for 2007 to 2013 has been provided. I have his estimate for 2013 in the amount of \$15,774. His employment for the 2013 year has been interrupted.

[289] He has earned a high of \$54,204 in 2009 while working part time in Alberta to a low as noted above in 2013.

[290] The average of the last five years excluding 2013 was \$33,540. This would yield a child support payment of \$487 (rounded).

[291] He insists he is able to be committed to a payment of approximately \$500.

[292] I accept \$487 as an appropriate monthly child support award.

[293] The father is expected to work to improve his employability and income in the 2014 year to meet the growing needs of the children.

[294] Each year on or before June 1st each parent shall provide to the other full and complete copies of their income tax returns whether filed or not together with all schedules of income and expenses if self-employed.

[295] The parties will adjust the child support award in accordance with the Nova Scotia Tables by agreement or failing agreement by court order. Changes shall be incorporated into an amended court order.

[296] Counsel for the Respondent shall draft the order.

Legere Sers, J.