

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Family Division

2018/FAM/div/000775

BETWEEN

ATW

Petitioner

AND

CRJW

Respondent

Before Hon. Mr. Justice Ian R. Winder

**Appearances: Marylee Braynen-Symonette for the Petitioner
Krysta Mayson-Smith for the Respondent**

20 and 22 July 2021

JUDGMENT

WINDER, J

On 22 July 2021 I dismissed a Motion brought by the Respondent (Husband) for sole guardianship of his child C. The Motion prayed in the alternative for an order restraining the Petitioner (Wife) from taking C out of the jurisdiction for the purposes of schooling in the United States of America without the Husband's consent. These are the promised brief reasons for my decision.

[1.]The Notice of Motion was filed on 16 June 2021. The Husband filed affidavits in support of his position and the Wife also stated her position in her filed affidavit.

[2.]The parties were married on 7 November 2009. C had been born almost 3 years earlier on 17 January 2007. C was the first of two children of the family. The Wife petitioned for a dissolution of the marriage on 16 November 2018 citing the Husband's adultery and cruelty. McKay J granted a decree nisi dissolving the marriage on 13 February 2019. The Husband unsuccessfully attempted to set aside the decree on 16 October 2019 however there has not been any adjudication on the ancillary matters, particularly custody of the children.

[3.]The application came on for hearing before me following the filing of a Certificate of Urgency by the Husband. His complaints are set out in paragraphs 6-13 of his Affidavit filed on 16 June 2021, where he states:

6. That while I do not oppose the child of the issue living with [the Wife], my parental rights remain valid and ought not to be ignored.
7. That [the Wife] continues to make decisions relative to the child in issue without communicating with me and without my consent.
8. That I often do not learn of some of these decisions until after they are made.
9. [The Wife] has on more than one occasion taken both of our children out of the country without communicating with me and without my consent.
10. That I recently learned that [the Wife] has and or is seeking to enroll the child in issue into an all-boys boarding school in Tennessee, USA in August 2021.
11. That I strongly oppose this decision, not only because it was made without my consent, but because I do not think the child in issue is

mature enough to be sent to another Country for schooling without direct supervision from [the Wife] or myself.

12. That I am also extremely concerned about the Covid-19 pandemic and how he may be impacted by same in a country with a greater population.

13. That I am not opposed to the child in issue attending boarding school in the future but knowing him, I do not think this decision is in his best interest and am concerned about [the Wife's] motive for wanting him sent to boarding school at this present time.

[4.] On the evidence it seems that C is a talented swimmer having taken up the sport 8 years ago. I am told that he is at the pool training twice daily. He has for the past 2 years been swimming competitively and has represented The Bahamas internationally at CARIFTA, CCCAN and UANA competitions. He has been described by Algernon Cargill, the President of The Bahamas Swimming Federation, as a gifted swimmer with the potential to compete at the Olympic level. Cargill also states that in order to earn a scholarship for his tertiary education C would need a more vigorous swimming and academic program than he receives in The Bahamas.

[5.] C applied for and was offered a scholarship in excess of \$30,000 to attend McCallie School, a boarding school in Chattanooga Tennessee. C's swim coach, himself a 3 time Olympian, describes McCallie School as one of the top boarding school in the United States both academically and for the advancement of swimmers. He recommends C's enrollment. The Wife, on C's behalf, accepted the scholarship and made preparation for the acquisition of a Student Visa.

[6.] No consultation of any kind was had with the Husband on this decision. He learned of the decision in conversations with C. The Wife says that she did not consult the Husband as all the decisions relative to C's education have always been made by her, without any input or interest shown by the Husband. She say that there was no input when C was enrolled in St Andrews High School, for which she also bears all fee paying responsibility. The Wife also says that she has always had financial support from her father with respect to C's educational costs but health issues will limit this assistance in the future. She says that, as C's tertiary educational needs

approach in the near future, boarding school would offer C the greatest opportunity to attend college and realize his dream of being an Olympian. The Wife contends that she has no support from the Husband in the upbringing of the child and that the application was not about C but about seeking to punish her. The Husband denies this. The wife says that she is not asking the Husband for any contribution to C's schooling at McCallie School.

[7.] It was unfortunate that the Husband was not consulted on this momentous decision concerning C's future. My decision however must be determined not on hurt feelings or whether the Wife should be punished for making a unilateral decision concerning C. Section 3 of the Child Protection Act prescribes the scope of my decision making process. It provides:

3. (1) Whenever a determination has to be made with respect to —
 - (a) the upbringing of a child; or
 - (b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the paramount consideration.
- (2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child.
- (3) In determining any question relating to circumstances set out in paragraphs (a) and (b) of subsection (1), the court or any other person shall have regard in particular to —
 - (a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;
 - (b) the child's physical, emotional and educational needs;
 - (c) the likely effects of any changes in the child's circumstances;
 - (d) the child's age, sex, background and any other circumstances relevant in the matter;
 - (e) any harm that the child has suffered or is at the risk of suffering;
 - (f) where relevant, the capacity of the child's parents, guardians or other persons involved in the care of the child in meeting his or her needs.

(emphasis added)

[8.] At the request of the Wife I met with C in my chambers. In my brief interaction with C, I was quickly able to agree with the assessment of his coach who described him as being mature for his age. The decision to attend the McCallie School is largely

C's decision and desire, although it is heavily supported by the Wife. C sees it as his best opportunity to develop in the sport, to face better swimming competition and to attain a College Scholarship. He wishes to become an Olympian one day.

[9.] I am satisfied that, in the circumstances, notwithstanding the reservations and objections expressed by the Husband, the decision for C to attend the McCallie School is in the best interests of C's welfare having regard to the factors identified in Section 3(3) of the Child Protection Act.

[10.] I therefore refused the Husband's application and made an Order confirming the decision of the Wife to enroll C in the McCallie School and to permit his attendance for the upcoming term.

[11.] This matter must be immediately returned to the Family Division for the long outstanding ancillary matters to be concluded.

Dated this 29th day of July 2021



Ian R. Winder
Justice