



[2024] JMSC CIV. 184

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA**

**IN THE CIVIL DIVISION**

**CLAIM NO. SU2019CVOO792**

**IN THE MATTER OF THE GUARDIANSHIP AND CUSTODY AMENDMENT ACT**

**BETWEEN                      GLENROY WALKER    CLAIMANT**

**A N D                              JUSTINE LUMLEY-MURRAY    DEFENDANT**

**Custody - Children - Custody of Child where previously retained in Foreign Country  
- ordered to be returned to Parent with whom normally resided in Jamaica.**

**Miss Caprice Morrison for the Claimant**

**Mr. Vaughn Bignall for the Defendant**

**Heard: July 1, 2024**

**Milwood Moore J. Ag.**

*Having heard evidence in this matter on July 1, 2024 the court ordered that closing submissions in writing were to be filed. The Court expresses its gratitude to both counsel for the tremendous assistance provided through the written submissions and authorities which were filed.*

### **BACKGROUND**

[1] This is a matter which had its genesis in the breakdown of the relationship between the parties. Both had resided together for a number of years as man and wife in the parish of Saint Catherine, with their son JMW, who is the subject of this

application. Whatever the nature of the rapport between the parties at the time of their separation, suffice it to say that sometime in 2017, the Defendant appears to have fled their home without warning. Ultimately, she travelled to the United States, where she has since resided and is now a citizen of that country. At the time of her departure, the Defendant left behind their son, who was then six years old. According to the Claimant, a marine engineer who was at the time employed to Svitzer Americas Limited, a company with head office located in Panama, he was overseas at work when he received a message from the Defendant, indicating that he should collect JMW from her mother because she, the Defendant, was leaving and he would have to take care of the child himself. The Claimant returned to Jamaica and collected JMW, who has resided with him from then to present. JMW would overtime, engage in communication with his mother. Communication between the parties has been strained and virtually non-existent, given that the Defendant had over the years provided little to no information concerning her whereabouts or contact number. According to the Claimant, his efforts to contact Mrs. Lumley-Murray immediately following her moving out of their home were futile, as he realized that she had blocked him by WhatsApp, Facebook and that his calls to her phone number went straight to voicemail. On the Claimant's version, it was through a mutual acquaintance that he learned that the Defendant had left the island.

- [2] According to the Claimant, in Summer of 2021, at his sole expense, he paid for JMW to visit his mother in the United States of America, that having been the first time the Defendant had seen their son since she left Jamaica in 2017. In December of 2021, JMW had journeyed to the United States to visit other family members, based on arrangements made by the Claimant. Regrettably, the circumstances in which the Defendant came to be aware of the presence of her son in the same country, was when she was contacted by the Claimant, who reached out to her through her sister. He advised the Defendant that due to Immigration issues and the fact that he was away in St. Eustatius, he needed her to assist JMW because the authorities refused to release him into the care of

anyone other than a parent and he would have been delayed in arriving. It was in these circumstances that the Defendant was again reunited with her son just before Christmas of 2021, after she travelled from Colorado to receive him from Immigration authorities in Florida.

[3] The Claimant agreed for JMW to remain with his mother for the holidays in Colorado, until the time for his return home to Jamaica by January 5, 2022 in preparation for the resumption of school. The Defendant however failed to return their son to the Claimant as agreed and did not respond to emails or Facebook communication. During this time, the Claimant still had no telephone contact information Mrs. Lumley-Murray. The Claimant was concerned for the implications of JMW overstaying the temporary waiver he had received in the absence of his passport containing his US visa, upon entry. As such by Ex parte Fixed Date Claim Form, filed in the Supreme Court of Judicature of Jamaica February 2, 2022, the Claimant sought a number of orders. The Court ordered the immediate and summary return of JMW to the Claimant on February 24, 2022. On that date, the Court also made an interim order granting the applicant custody, care and control of JMW until further court orders. The Claimant filed an Amended Fixed Date Claim Form on February 25, 2022, in which he claimed the following orders:

- i) JMW, male child, born on 28<sup>th</sup>, August 2011 is immediately and summarily returned to Jamaica in the care and control of his father Glenroy Anthony Walker.
- ii) The Claimant: Glenroy Anthony Walker is granted sole custody of the relevant child JMW, born on the 28<sup>th</sup> day of August 2011 with care and control granted to the Claimant Glenroy Anthony Walker, with visiting access to the Defendant Justine Lumley-Murray.
- iii) The hearing of this matter take place via zoom or any other virtual means convenient to the parties.
- iv) Such further order as this Honourable Court deems just in the circumstances.

- v) Time be abridged for the service of this Fixed Date Claim Form so that the First Hearing may be fixed less than four (4) weeks after being issued.

- [4] During the course of the trial, the Court was advised by the Claimant's Attorney-at-law that the Fixed Date Claim Form had been further amended so that the claim is now for *joint custody* of JMW, with care and control to the Claimant and *liberal* access to the Defendant.
- [5] The Defendant filed an Acknowledgment of Service of the Fixed Date Claim Form on April 5, 2022 and on May 27, 2022, filed an affidavit in Response to the Ex parte Fixed Date Claim Form. In that affidavit, the Defendant gave details of an unpleasant and abusive life she said she lived with the Claimant, which culminated in her making the difficult decision to leave their home out of fear.
- [6] The Defendant also claimed that it was now in the best interest of JMW, for sole custody to be granted to her, with care and control to be granted to her with visiting access to the Claimant.
- [7] The Defendant mother explained that at the time when she left the home, she was unemployed and had no source of income outside of the Claimant who had supported the family and that she knew she could not support JMW at that time, had she taken him with her. She stated that it tore her apart to leave her son, but that it was in his best interest at the time not to be "dragged into a situation that was unstable," which she said was all she could offer him, in circumstances where she described herself as "*literally running for her life.*"
- [8] The Defendant also expressed in her Affidavit that she did not want to uproot JMW from a routine and environment that he had become well familiar with and settled in at such a young and impressionable age. She indicated that her contact with her son was irregular at best as the Claimant was often unavailable and had replaced her sister who was JMW's caregiver, through whom she would have been readily able to speak with her son. This was disputed by the Claimant who

exhibited documents which seemed to suggest that the Defendant was fully aware and in fact apparently agreed to her sister being relieved of her duties as caregiver to their son.

[9] The Defendant has explained that since leaving Jamaica, she has been married, given birth to a son in 2019 and established a home with her husband, a serving member of the U.S. Military. Further, that she is now financially capable of supporting JMW with little to no help from the Claimant. While the Claimant described the Defendant as essentially having expressed little interest in seeing JMW and as though she was largely unable to do so, the Defendant spoke of growing desperate and despondent with the number of times the Claimant denied her requests to have her son visit her. The Defendant described calls from the Claimant as being *abusive, rude and insulting*, hence her reason for not sharing her direct contact number with him. The Defendant described the myriad of emotions she experienced when she learned of her son's presence in the United States only because there was a problem and the Claimant was too far away to assist. The Defendant made arrangements and collected JMW from Immigration authorities and took him to her family home in Colorado. She further explained that she retained JMW, because of seeing how comfortable he was with her and her family and having heard him complain that the Claimant was never at home to spend time with him.

[10] On the Defendant's account, based on her concern for the well-being of her son, she made the unilateral decision not to return him to Jamaica at the previously agreed date. As a consequence, JMW did not resume school in Jamaica, as scheduled. Instead, he was introduced by the Defendant to a new life and a new school in Colorado. Meanwhile, the Claimant made several pleas for the return of JMW. There was no communication between the Claimant and JMW throughout this period of months. This notwithstanding the close relationship shared by the father and son. As noted, it was not until sometime after the intervention of the

Court, that the Defendant eventually complied and returned JMW to his home in Jamaica.

- [11] Having heard evidence from both parties, the Court is now tasked with the unenviable responsibility of deciding essentially, whether mother or father should have custody, care and control of JMW and the related orders to flow therefrom.

### **Social Enquiry Report**

- [12] A Social Enquiry Report was filed in this matter on March 14, 2024. During the course of the investigations which informed the contents of the report, there were interviews with various persons involved in the life of JMW. In this regard, teachers from the Old Harbour High School where JMW is currently enrolled, described him favourably as relates to his school work and attendance. A few of his teachers described him as talkative, disruptive and inconsistent with his school work but the overall report from his school was favourable. The report indicated that JMW is class monitor and is considered to display leadership qualities. He also received the Mathematics Gold Award for examinations of October 2023. JMW reportedly placed 6<sup>th</sup> from a class of thirty-five students. He was described as speaking confidently and boldly, with a good sense of self-identity and approved friendships being formed in his circles.
- [13] The assigned officer did however express concern as to whether JMW is getting sufficient rest in light of the fact that he reportedly spends a lot of time playing his games. It was further pointed out that his mental health is of great consideration and that JMW shared that he is happy and well.
- [14] According to the interviewer, the Claimant indicated that he spends time to get to know some of JMW's friends and places he visits. He is also conscious as to how he behaves, being of the view that his behaviour will in turn impact how JMW behaves. The Claimant indicated that he provides JMW with support and has conversations with him that will help him to grow. The report found that JMW is

being sufficiently stimulated and while he has some areas where there can be improvement academically, he is developing as a balanced individual with his physical activity of basketball, combined with healthy social interaction and formation of healthy friendships. Overall, the report expects that JMW will be able to attain his full potential.

[15] Of importance to the Court, JMW shared that he is not impacted by the poor relationship between his parents. He also stated that he was fully aware of the matter before the court and was not bothered by the process as he feels loved by both his parents. JMW is described as being intelligent and poised. The officer noted that he is provided with guidance and boundaries, whereby he has to seek the Claimant's permission to go anywhere, that he is given chores and generally complies with both stated and unstated rules. Further, that there is open and clear communication in the home, consistency in the Claimant's stance, as well as respect and self-discipline.

[16] The report noted that the Claimant is currently employed to Ocean J Towing Ltd and works overnight twice per week on a Tuesday and Thursday, during which time, JMW is cared for by his adult cousin who resides at their home and other relatives in close proximity. Based on the details received, it is clear that the Claimant is financially capable of providing for JMW. Among the activities shared between JMW and his father are playing video games, fishing and back yard gardening. As indicated in his second affidavit, the Claimant's wife has a teenage daughter, with whom JMW is said to have good relationship as well as an infant son, whom he is said to adore.

[17] According to the report, JMW and the Claimant share a strong father and son bond. The child shared that he loves his mother equally. Critically for this Court, is the recommendation made in the Social Enquiry Report which is that:

*"In light of the findings, JMW appears to be in receipt of a good education while here in Jamaica. His health care, social and*

*other needs are being met sufficiently. He shared that he is happy. All indications are that he is being provided for and is loved in a way he recognizes. There is nothing to suggest that he is in need of anything. **A recommendation is being made that the placement is left uninterrupted.** He is currently excelling in all aspects of his personal, academic and social life. He also has the support of family to include his mother who he communicates with very well.*

[18] The Defendant is also well capable of providing for JMW, who is obviously so well integrated into their family in the United states, that he would readily be able to benefit from the entitlements of the Defendant's husband.

#### **VIEWS OF JMW**

[19] The report stated that according to JMW, he is currently happy at home with his father, that he loves both his parents and his focus is on improving his grades as even though he is doing well, his aim is to do better.

#### **ISSUES**

[20] These are the issues to be determined: -

- a) Whether the best interest of JMW would be served by an order granting joint custody to the parties, with care and control to the Claimant father and liberal access to the Defendant; or
- b) Whether the best interest of JMW would be served by an order granting sole custody to the Defendant with care and control to her and visiting access to the Claimant.



## **LAW**

[21] Section 7 of the Children (Guardianship and Custody) Act governs applications for custody and provides:

“The court may upon the application of the father or mother of a child make such order as it may think fit regarding the custody of such child and the right to access thereto of either parent having regard to the welfare of the child and the conduct of the parents, and to the wishes of the mother as well as of the father...”

[22] Section 18 of the Act provides:

“Where in any proceeding before any court the custody or upbringing of a child is in question, the Court shall regard the welfare of the child as the first and paramount consideration and shall not take into consideration whether any right at common law possessed by the father, in respect of such custody or upbringing is superior to that of the mother, or the claim of the mother is superior to that of the father.”

[23] Section 2 of the Child Care and Protection Act provides:

“Where there is a reference in this Act to the best interests of a child, the factors to be taken into account in determining the child’s best interests shall include:

- (a) The safety of the child
- (b) The child’s physical and emotional needs and level of development
- (c) The importance of continuity in the child’s care
- (d) The quality of the relationship the child has with a parent or other person and the effect of maintaining that relationship.
- (e) The child’s religious and spiritual views
- (f) The child’s level of education and educational requirements

- (g) Whether the child is of sufficient age and maturity so as to be capable of forming his or her own views and, if so, those views are to be given due weight in accordance with the age and maturity of the child
- (h) The effect on the child of a delay in making a decision.

[24] This Act shall be interpreted and administered so that the best interests of the child is the paramount consideration and in accordance with the following principle:

- (a) children are entitled to be protected from abuse, neglect and harm or threat of harm;
- (b) a family is the preferred environment for the care and upbringing of children and the responsibility for the protection of children rests primarily with parents.
- (c) if, with available support services, a family can provide a safe and nurturing environment for a child, support services should be provided;
- (d) where the child is of sufficient age and maturity so as to be capable of forming his or her own views, those views should be taken into account when decisions relating to the child are made;
- (e) kinship ties and the child's attachment to the extended family should be preserved if possible; and
- (f) decisions relating to children should be made and implemented in a timely manner.

[25] Section 3 of the Child Care and Protection Act provides as its objective:

“to promote the best interests, safety and well-being of children.”

[26] In **Re McGrath** at page 243C

***“The Court has to consider therefore, the whole of the circumstances of the case, the position of the parent, the position of the child, the age of the child, the religion of the child, in so far as it can be said to have a religion, and the happiness of the child ... Again it cannot be merely***

***because the parent is poor and the person who seeks to have possession of the child as against the parent is rich, that, without regard to any other consideration, to the natural rights and feelings of the parent, or the feelings and views that have been introduced into the heart and mind of the child, the child ought to be taken away from its parent merely because its pecuniary position will be thereby bettered.”***

#### **SUBMISSIONS FOR THE CLAIMANT**

- [27] The Claimant submits that sole custody ought not be granted to the Defendant as it would not be in the best interest of the child. Further that JMW would benefit from stability and structure in his life, making it suitable for him to remain with his father.
- [28] According to the Claimant, parental desires cannot and should not supersede the needs of children and where the parent has acted recklessly, the law allows the Court to consider the behaviour of the parent in arriving at a decision, not with the aim of punishing the parent, but rather the consideration should be how the child has been and may continue to be negatively affected by the decisions or actions of the parent.
- [29] It was further submitted that the action of the Defendant in refusing to return JMW to his home, abruptly interrupting his schooling, retaining him in an unfamiliar environment and refusing to communicate with the Claimant, indicates a disregard of measured decision making, the desired structure and stability in the child's life.

#### **SUBMISSIONS FOR THE DEFENDANT**

- [30] For the Defendant, it was acknowledged that both parents love JMW and can care and provide for him adequately. Concern is however expressed that the Claimant is unlikely to encourage contact and bonding between the child and his mother and maternal relatives. According to the defence, the Claimant does not enjoy a stable existence especially having a new wife and two young children living outside the

jurisdiction. Further that there is no certainty of stability in the Claimant's domestic or work situations. Specific concern has been expressed as to the need for the Claimant to rely on an external caregiver in the form of a paid cousin "*who can disappear at any time.*"

[31] Mrs. Lumley-Murray has been married for five years to a serving member of the United States Army, Sergeant 1<sup>st</sup> Class by rank. Mr. Murray has met JMW on two occasions, first when JMW spent one week with the family and later, when he spent four months. It appears from the evidence that JMW has been well accepted and integrated into the Defendant's household. It was her evidence that a suitable home has already been identified, to which the family would move, in order to provide JMW with his own bedroom. Further and importantly, on the issue of what the legal status of JMW would be, the Defendant gave evidence that he would automatically become a citizen of the United States of America, in the event that a custody order is made by the Court.

[32] It was submitted that by far, the Defendant presents a more stable situation for JMW, with the love of his mother, a role model in his stepfather, siblings and a grandmother figure who lives in the same home and would provide care. Emphasis was placed on the advanced health care system in the United States and the benefits to which JMW would be entitled, as a member of the family of a serving member of the United States military. The Defendant has thoughtfully highlighted that the United States would offer greater opportunities for gaming, which is a clear passion of JMW. This has been compared to the limited offerings at the local Old Harbour High School, with respect to Information Technology and computer training.

[33] Importantly, it was also submitted on behalf of the Defendant through the **McGrath case**, that the financial status of each party should not determine the granting of custody orders for children.

[34] It was also submitted that no amount of kindness from any other person, can take the place of a mother and that the child's welfare is closely linked to being in the care of the mother.

[35] The Defendant expressed concern and this was reflected by questions in cross-examination of the Claimant, as to whether he intends to migrate to the United States, given that his wife and young children reside there. The Claimant indicated that he had no plans to migrate but also that he could not say he had decided to reside permanently in Jamaica. It was submitted that the situation of the Claimant lacks stability given that he could migrate at any time and that this too would place JMW in a situation where he would have to make many adjustments.

### **DISCUSSION AND ANALYSIS**

[36] From listening to the evidence of both parties, this Court is left with absolutely no doubt, as to how much these parents love and desire to be integral in the day to day life of their son, JMW. Unfortunately, their separation and current residential arrangements in two different countries, makes this virtually impossible for both at the same time. It is for this reason that Court will have to make a determination of what is in the best interest of the child at this time. This will ultimately guide the court in its deliberations. The fact that JMW will reside with one parent, certainly does not mean that he would be absent from the life of the other. Instead, it means that the suitable orders are required to ensure that both parties have access to JMW and that both the Claimant and Defendant enjoy the parental rights which are accorded to them by law.

[37] The decision in this case has been difficult as the Court has carefully considered the case for both parents, who have each demonstrated that they are equally committed to giving their son a life filled with love, attention, adequate supplies to meet his every need and limitless opportunities for the future. His mother, the Defendant sees the limitless opportunities in a modern educational system as the United States, which she says could enhance his interest in video games. She also

sees the wide array of health care benefits to which JMW would be entitled as a family member of her husband who serves in the United States military. The Claimant father on the other hand believes that he can provide the best environment for JMW, where he is comfortable with his established school, friends, activities and community network.

[38] For avoidance of doubt, while the Court must have some regard to the conduct of the parties, this Court wishes to make it clear, that the Defendant unlawfully withheld JMW from his father and delayed his return to school even after an order of the Court was made, this has not prejudiced the Court's determination as to what would be the most suitable custody arrangements for the child at this time. The Court as it is duty bound to do, has taken note of all the events which precipitated the institution of these custody proceedings, but acknowledges the apparently genuine concern of the Defendant for her firstborn child JMW when according to her, he expressed issues he had with his father being away all the time and thus having to leave him with caregivers.

[39] Having clearly been the subordinate party in the relationship with the Claimant, the Defendant had it seems, no financial independence or otherwise from the Claimant. She described her lived reality when she left without her 6-year-old son, as a testament to her seeking to act in his best interest at the time, given her state of unemployment and cognizant she was in no position to care for him. To begin with, this Court does not form any conclusion that in 2017, the Defendant abandoned her son, as though without care. She has placed before this court her version of events and her state of mind at the time. If the Claimant has made unfavourable utterances to JMW regarding his mother, he is advised to desist from any such derogatory reference in the future. The same is true for Mrs. Lumley-Murray. Both parties ought to recognize that negative references from either of them about the other, can only prove deleterious and in fact do a disservice to their child.

[40] It has not been lost on this Court that since the Defendant left the matrimonial home shared with the Claimant, there has been no formal, structured arrangement in place for the Defendant to communicate with her son and have him spend meaningful periods of time with her and her family. The Court acknowledges contradictory versions from both parties as to what requests were made by the Defendant to have JMW spend time with her and whether the Claimant in fact deliberately denied her access to her son. Whatever the actual details, this Court is satisfied that the Defendant has not had access to her son as she should have and this must be remedied immediately. The Court is pleased that from reports from the Defendant it seems that there has been some improvement.

[41] The Court further notes that had there not been desperate circumstances involving United States Immigration authorities, it appears that the Defendant had no intention of informing the Defendant that their son was in her country of residence. The Court notes that while effort was obviously made to facilitate JMW visiting and spending time with the wife and other family members of the Claimant, no such consistent efforts, it appears, were made in respect of JMW's biological mother and her relatives.

[42] The Court accepts that while the Defendant left her relationship with the Claimant behind in 2017, she did not thereby relinquish her parental rights to JMW. The rights of the Defendant are therefore to be given full effect with full cooperation from the Claimant.

[43] The Court has taken the time to note these matters on the record, to ensure that the parties are aware that the acrimony between them has been recognized. If the parties are genuine as the Court believes they are, in their professed love for their son JMW and if this is matched by equal commitment to working together for his benefit, things cannot continue as they have been. Not only will structured arrangements be put in place for access and communication with JMW, but there will have to be a civilized mode of communication between the parties as it relates

to the child. If the child is able to benefit from the love and care of his stepmother and stepfather, along with extended families on both sides, that can only, in the view of this Court, enure to his long term benefit and balanced development.

### **The Importance of Considering a Range of Factors**

[44] The various legislative provisions and the common law concerning the determination of custody applications, indicate that a multifaceted examination of the circumstances of the child and each parent is required in determining custody applications. There is no generalized approach and each case turns on its facts. The best interest of the child is paramount and the Court must critically examine all relevant factors, which together go towards the welfare and well-being of the child.

[45] *The Children (Guardianship and Custody) Act* provides for consideration of the emotional needs and level of development of the child. JMW is now thirteen years old, and as the evidence indicated, he has been living with the Claimant and Defendant from birth, then alone with the Claimant since he was six years old. The Act also directs the Court to consider the importance of ***continuity*** in the child's care and the quality of the relationship the child has with a parent or other person and *the effect of maintaining that relationship*.

[46] These factors in combination, call into sharp focus the fact that according to the Social Enquiry Report, JMW enjoys a very good relationship with his father. Continuity in that relationship, especially at this vulnerable period in the life of a developing young boy at the start of his teens years, in this Court's view is important and weighs heavily in the determination to be made.

[47] While this Court has no doubt, that JMW would receive a fine example and perhaps mentorship from the Defendant's husband who is a 1<sup>st</sup> Sergeant, the child would stand to be even more tightly cushioned as he learns more about life, being in the continued presence of the Claimant, with whom he has resided for all these years and bonded from birth even in the Defendant's absence.



[48] The Court places tremendous weight on the assessment of the Defendant, who in obvious candour to the Court, testified that *the Claimant is a good father*. Mrs. Lumley-Murray went further to explain “***That is why I was comfortable to leave my six-year-old son with him.***” The Social Enquiry Report suggests that this remains an apt description of Mr. Walker today, that he is a good father.

[49] This Court therefore, from all the evidence led, has been given no reason to be concerned for the safety or due care of JMW, if he continues to reside with his father. Possible migration is not to the mind of this Court a risk which is significant enough to raise concern, given that the evidence of the Claimant is that there is no plan afoot for migration. In any event, should such a course be adopted in the future, it is clear that JMW is likely to be prepared, to the extent that he has reportedly travelled and spent time with his stepmother and siblings overseas and similarly when she visits Jamaica. This would be far different from a sudden uprooting which could become necessary for the Defendant and family at any time.

#### **AREAS TO BE STRENGTHENED**

[50] Some degree of increased supervision might be required as the Social Enquiry report raised concerns as to whether JMW is getting sufficient rest at nights, noting that he spends long periods playing his video games. This is likely to be one area in which the Claimant may need to establish clearer boundaries to assist JMW in regulating himself. As the report opined, adequate rest is critical to the child’s mental health.

[51] The Court is of the view, that the Claimant did not take sufficient or indeed any steps to foster deeper relationships between JMW and his maternal relatives. The fact is that Mr. Walker has been resident in Jamaica and it was fully open for him, had he appreciated the significance for JMW’s balanced development, to contact the maternal Aunt and grandmother of the child in pursuance of suitable visiting arrangements. This is so especially since prior to the breakdown of their family, JMW had been accustomed to visiting with these relatives.

[52] The Court is also required to consider whether the child is of sufficient age and maturity so as to be capable of forming his or her own views and, if so, those views are to be given due weight in accordance with the age and maturity of the child. There can be no doubt that JMW is of sufficient age and understanding to formulate his own view of his life, his situation and indeed the possibilities placed before him at this time. It is for this reason that the Court ascribes due weight to the view, reportedly expressed by him that he wishes to remain where he is and focus on improving his grades. JMW seems to be a youngster who, while recognizing the issues attendant on this case, is focused on his goals and the things he needs to do in order to propel himself forward and give of his best. The Court expects that his confidence must have some connection to how he has been raised, as well as his knowledge of the love of his biological parents towards him.

#### **COMMUNICATION BETWEEN THE PARTIES**

[53] This Court noted the multiple times the Social Enquiry Report stated that JMW is not affected by this court case or the poor relationship between his parents as he knows they both love him. Whether the child feels impacted at this time or not, the parties will be held accountable by this Court, to consciously revise how they communicate with each other. The Claimant has spoken of his effort to be an example of good behaviour that his son will model. The Court is certain that the Defendant wishes her son to continue to grow to be a well-adjusted young man. She too will have to find a way, however difficult, to move forward, notwithstanding the perhaps bitter moments of the past. However negative the impact of the Defendant's departure, the Claimant equally needs to work to overcome that experience.

[54] To their joint credit, both the Claimant and Defendant have stated their willingness to communicate with each other. According to the Defendant, ***"I am absolutely willing to provide my number (to the Claimant) as long as he be respectful."***

[55] In the words of the Claimant ***“Wherever the barrier is, I’m prepared to go there move it for the best interest of our child, JMW.”***

[56] As noted in the ***McGrath*** case, cited by the Defendant’s Attorney, financial capacity alone ought not ground custody decisions by the Court. In arriving at its determination, this Court has not in any way, been impacted by the relative financial positions of the Claimant and Defendant. The Court has been equally satisfied that both parties have the wherewithal to adequately meet the needs of JMW.

[57] The Court is however, especially moved by the recommendation of the Social Enquiry Report, along with the reported views of JMW at this time. It is clear from the report that the Claimant has provided love, care, healthy communication and a good home environment in which JMW can continue to thrive. Additionally, the Claimant has made fundamental adjustments in his employment, which allow him greater time to devote his attention to raising and supervising JMW. Had this not been done, the outcome of this matter may have been very different.

[58] The Defendant has referred to the care arrangements made by the Claimant as not lending to stability, since in her view, the paid cousin could leave at anytime, while in her home, a committed grandmother would be responsible for JMW and other children. This Court notes that from the account of the Claimant and the results of the investigation of the social worker, the arrangements established overtime, have resulted in JMW being a well-adjusted youngster over these years since his return to the Claimant’s custody. It is based on the strength of these arrangements, that the Social Enquiry Report recommends that placement of JMW not be interrupted at this time.

[59] This Court therefore accepts the appropriateness of this recommendation and adopts it.

[60] This Court equally accepts that the parties have spoken with sincerity as to their willingness to communicate for the benefit of their son. Still, it is acknowledged that there is work to be done and serious attitudinal adjustments to me made, before things can flow smoothly in this regard. It is therefore recommended that the parties receive professional counselling to help them improve their communication and ability to effectively co-parent JMW.

[61] It is important that both parties recognize that either of them can bring this matter back before the Court, if in their opinion, there is any development or concern of sufficient seriousness to warrant revisiting the arrangements made today.

[62] For the above reasons, the orders of the Court are as follows.

### **Orders**

- i. The Claimant and Defendant are granted joint custody of JMW with care and control to the Claimant.
- ii. The Defendant is to have liberal access to JMW as follows:
  - a) Residential access to JMW for half of each major school holiday.
  - b) Each year, the parties are to have rotational access to JMW as regards Christmas and New Year's holidays, commencing with Christmas day of 2024, being spent with the Defendant
  - c) If at any time, the Defendant is able to travel to Jamaica, she is to provide the Claimant with at least 7 days' notice and is to be allowed residential access to JMW during the period of her stay in Jamaica.
  - d) The Claimant is to ensure that the Defendant has unimpeded communication access to JMW, by telephone, at least four times per week.
  - e) JMW is to visit with his maternal grandmother at least once per month and if convenient to her, is to

spend one weekend per month with her. The arrangements for this visit are to be facilitated by the Claimant and Defendant.

- iii) If either the Claimant or Defendant is desirous of making arrangements for JMW to travel outside of the country in which they ordinarily reside, twenty-one (21) days' notice must be provided to the other party.
  
- iv. The Claimant is to provide the Defendant with a copy of every academic report issued by the educational institution in which JMW is enrolled, within two days of its being issued.
  
- v. Liberty to apply.
  
- vi. Each party is to bear his own costs.
  
- vii. The Claimant's Attorney-at-Law is to prepare, file and serve the formal order.