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**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION**

Cause No.: FAM 252 of 2013

BETWEEN

DC

Petitioner/Applicant

AND

RC

Respondent

IN CHAMBERS

Appearances: **The Applicant in person.
Mr. Graham Hampson and Ms. Sulekha Tummala of Hampson
& Company for the Respondent**

Before: **The Hon. Justice Marlene I Carter (Actg.)**

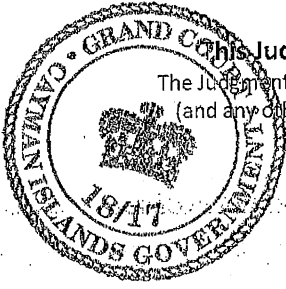
Heard: **24, 25 May 2018, and 7, 8 May 2019**

Judgment Delivered: **29th January 2020**



HEADNOTE

***Application for Relocation; Paramountcy of the Welfare of the Child;
Parent's inability to settle; medical issues***



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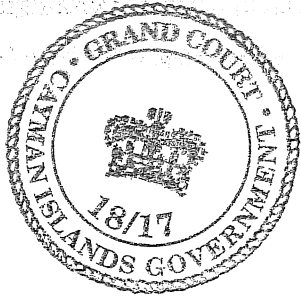
JUDGMENT

Background

1. The marriage between the parties was a relatively short one. They met in the Cayman Islands and married on the 2nd May 2008. In January 2010 the parties welcomed a daughter “A”. In February 2014 the Petitioner left the matrimonial home. After the Petitioner filed for divorce and the Petition was proved the parties agreed a Consent Order dated 11 April 2018. This Consent Order dealt with ancillary matters arising out of the marriage and it was agreed that its aim was to achieve a clean break in respect of the parties’ financial affairs in relation to themselves. The only outstanding ancillary issues not determined by the Consent Order, related to the arrangements for the child of the marriage.
2. On the 24th and 25th May 2018 this court heard the Petitioner’s application seeking leave to relocate to the USA with the child of the marriage, (“the first hearing”). The Petitioner sought an adjournment of the application the second day of the first hearing on the ground of her health. The Court acceded to the request and Ordered that the application for relocation was not to be restored before the expiration of one year in order for the Applicant to receive the recommended treatment and because the court was of the view that the Applicant could be significantly disadvantaged on the application due to her health issues. The living arrangements for the child of the marriage were to remain the same during this period.
3. In March 2019 the Respondent applied to bring the matter back before the court. A Directions Order, made on the 22nd March 2019, varied the Maintenance Order that had previously been in place and the Respondent’s contact with the child of the marriage was increased by agreement between the parties. Such arrangements for contact were as follows:

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“6. By agreement, the Respondent shall enjoy increased contact with [A] which shall henceforth be at the following times:

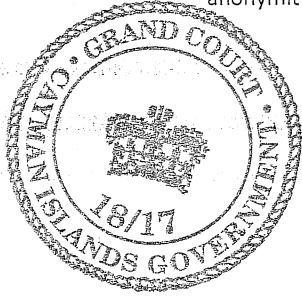
- (a) Weekly: From Wednesday after school until the start of school on Friday mornings each week; and
- (b) Alternate Week-Ends: From Friday after school until Monday morning on alternate weekends.
- (c) As Otherwise Agreed: the parties are at liberty to vary the above mentioned schedule with suitable warning to and the written or electronic agreement of the other party...”

The Applicable Legal Principles

4. The application for relocation is governed by the *Children Law (2012 Revision)* (“*the Law*”) Section 15 (1) of *the Law* provides that a party who seeks to relocate with their child outside the jurisdiction of the Cayman Islands requires either the written consent of every other party with parental responsibility for the child, or the permission of the court.
5. *The Law* makes clear that the court’s paramount consideration in determining any such application is the welfare of the child. Section 3 of *the Law* encapsulates the “*paramountcy principle*”. The issue of relocation must be considered with reference to a “*welfare checklist*”, wherein the following are the primary considerations:
 - a. *the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);*
 - b. *his physical, emotional and educational needs;*
 - c. *the likely effect on him of any change in his circumstances;*
 - d. *his age, sex, background and any characteristics of his which the court considers relevant;*
 - e. *any harm which he has suffered or is at risk of suffering;*

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- f. *how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and*
- g. *the range of powers available to the court under this [Act/Law] in the proceedings in question;”*

6. There are a number of settled authorities on the issue of relocation, which this Court has considered on the instant application. These include *Payne v Payne*¹; *K v K*²; *Re F*³; *Re C*⁴

7. Apart from these, judgments of the Cayman Islands Grand Court are also instructive. In *B v B*⁵ Williams J. set out the applicable legal principles thus:

“88. *The first and overarching principle must be that the child’s welfare is paramount. It takes precedent over any other consideration.*

89. *The next principle is that the court should have regard to the guidance handed down in case law when considering what factors are to be weighed when determining what is in the child’s best interests. It is important to note that the guidance should no longer be confined by labels given to the category of care. This means that a judge may consider the **Payne** guidance to an extent that he may determine to be relevant to the case, even in what might be termed a shared care case. Attorneys and judges should avoid detailed classification of relocation cases and hearings should not get bogged down in taxonomical arguments or preliminary skirmishes as to what characterization should be applied to the case by virtue of the time spent with each parent or other aspects of the care arrangements.*

90. *When the court considers the guidance, the following questions, in a case such as this involving an application made by the mother, should ordinarily be raised and addressed:*

¹ [2001] EWCA Civ 166

² [2011] EWCA Civ 793

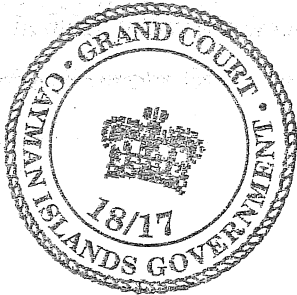
³ [2012] EWCA 1364

⁴ [2015] EWCA Civ 1305

⁵ 2013 1 CILR 271

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- (i) *is the mother's application genuine, in the sense that it is not motivated by some selfish desire to exclude the father from the child's life?*
- (ii) *Is the father's opposition motivated by genuine concern for the future of the child's welfare or is it driven by some ulterior motive?*
- (iii) *What would be the extent of the detriment to the father and his future relationship with the child were the application granted?*
- (iv) *To what extent would the detriment to the father, if the application were granted, be offset by extension of the child's relationship with the maternal family, and if applicable, homeland?*
- (v) *Is the mother's application realistic and founded on practical proposals that are both well researched and investigated?*
- (vi) *What would be the impact on the mother of a refusal of her realistic proposal? The weight placed on this will increase if the child resides with the mother.*

91. *Another principle arises from the fact that the circumstances in each case vary infinitely and the court should not, therefore, be unduly fettered in its approach when deciding what is in the best interests of the child. The court should regard the guidance, which can promote consistency, as helpful in determining the best interests of the child, but not feel that it has to be applied rigidly.*

92. *Finally, there is no legal principle, or even legal or evidential presumption, in favour of an application to relocate by a primary carer."*

8. These principles were reiterated in the Court of Appeal judgment in ***B v B***⁶

9. In the case of ***PC v JC***⁷ Mangatal J. referred to ***RE Y (LEAVE TO REMOVE FROM THE JURISDICTION)***⁸. In that case Hedley J referred to a set of circumstances which are similar to those before this court and his conclusions also inform this Court's approach on this application.

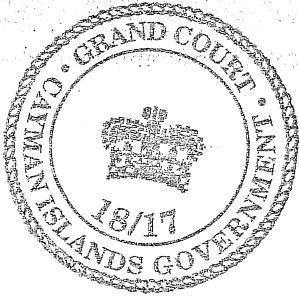
⁶ [2014] (2)(CILR) 234

⁷ FAM 18 of 2014, 15th February 2016

⁸ 2004 2 FLR 330

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*“[14] Now, the court clearly contemplates two different states of affairs. The one, the more common and in some ways the more obvious is where the child is clearly living with one parent, and it is that parent that wishes to leave the jurisdiction for whatever reason. The other, and much less common state of affairs, is where that does not exist and either there is a real issue about where the child should live, or there is in place an arrangement which demonstrates that the child’s home is equally with both parents. In those circumstances, which are the ones that apply in this case, many of the factors to which the court drew attention in **Payne v Payne** whilst relevant, may carry less weight than otherwise they commonly do.*

[15] The father does have an application for a residence order in this case but it was raised only in response to the mother’s application for permission to remove, and the father’s actual proposal is for a continuation of the present position.

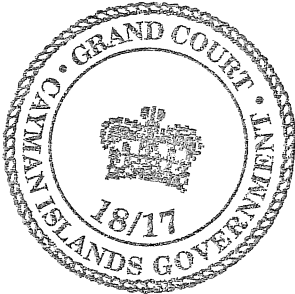
[16] This case accordingly falls outside the main run of cases that one encounters where the problem is raised and certainly within my own experience is unique. What it seems to me I must do is remind myself of the opening provisions of the Children Act 1989. Section 191 says that when a court determines any question with respect of upbringing of a child, the child’s welfare shall be the court’s paramount consideration, and in considering these issues I have to take a number of matters into account as required by section 1(3). It seems to me that those matters, the ones that are important in this case are the educational and emotional needs of Y, the likely effect on him of any change in his circumstances, and his age and background so far as his life is presently concerned. It seems to me that I need to remind myself that the welfare of this child is the lodestar by which the court at the end of the day is guided.

[17] I have stated the case within a very short compass, because there really is no significant dispute as to the essential facts in the case or as to the factors which the court ought to take into account. The position of both parents is entirely reasonable, entirely understandable and potentially congruent with the best interests of Y. The problem is that the respective positions are mutually exclusive, and thus one reasonable, honest and decent parent is going to have to receive a devastating disappointing blow...”

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10. Similarly, in the particular circumstances of this case, especially the events related at paragraph 2 above, the observations of Richards J in the case of *JE v ND*⁹ at paragraph 42 are relevant and this court adopts her approach on this relocation application where the interests of A are central to the court's determination.



“42. *In keeping with the guidance provided by the cases referenced above, I approach this matter with care, mindful that there are no presumptions in favour of either party. There is no presumption in favour of or against mother for any reason. There is no presumption in favour of or against father for any reason. The gender of the child is not a factor which would weigh upon this case. The amount of time which each parent presently spends with the child or any particular label which may be attached to the present residence arrangements is not a factor which would weigh upon this case. This is a blank slate. Thus I approach this case without pre conceptions one way or another, considering the evidence placed before the court on the hearing in order to make findings of fact where necessary and ultimately an overall value judgment as to what decision would be in the best interests of E. This is the paramount consideration which I must bear in mind as I decide upon these applications by mother and father.*”

The Parties to the Application

11. The Respondent presented a concise summary of the background facts which included a synopsis of the parties to this application. These facts are not in dispute. The Applicant Mother is referred to as “M” and the Respondent Father as “F”.

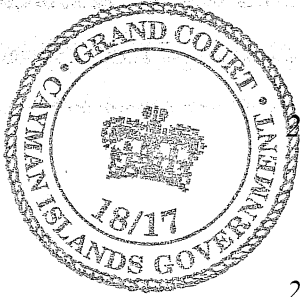
“20. *F was born and educated in UK and holds a British passport and Caymanian citizenship. In his evidence he says that he has now been in the Cayman Islands for 18 years. F is an engineer, employed by CUC. He is in stable and long term employment and financially has been the provider.*

21. *M is an American who grew up in Massachusetts, but left there at the age of 18. She has a Bachelor's degree in fine arts, which prepared her to work in the area of graphic design and advertising. She is a college education graphic/communication specialist. Although not*

⁹ FAM 0115/2012

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specifically referred to by M in her evidence, M has run her own business for some years.

...

22. *[A] is the daughter of the Parties. She is described as a "bright, outspoken and intelligent" girl. [A] is currently well settled in school and is regarded in fact by her school as a "rock-star"*

...

23. *At the moment [A] shares contact time between M and F in accordance with [a] ... Court Order...[of] 25th July 2014."*

The Applicant's position

12. The Applicant's affidavit of 16th November 2017 is relevant before me as well as her affidavit of 9th April 2019. Other affidavits in support from the Applicant's parents, her brother, cousin and the reports of Dr. Lockhart are also considered here. The Respondent has filed a number of affidavits in response to the application. The most recent of these was filed on the 26th April 2019. The court has considered the various affidavits. It was agreed that the testimony presented by both parties at the first hearing was still relevant to be considered by the court as the parties had addressed many of the issues relevant to the application at that hearing.

13. Significantly, the Applicant was represented at the first hearing but appeared unrepresented at the 2nd hearing. The Applicant indicated to the court that she was content to represent herself and this court found the Applicant to be articulate and able to advance her position on the application. She was able to deal with issues directed by the court relating to the welfare checklist and raised relevant matters for the court's attention.

14. At the first hearing the Applicant gave long and detailed testimony regarding the reasons for the application to relocate. She expanded on the matters raised in her affidavit in support of the application. She related that there had been a longstanding agreement between herself and the Respondent that they should go to Boston where her parents live

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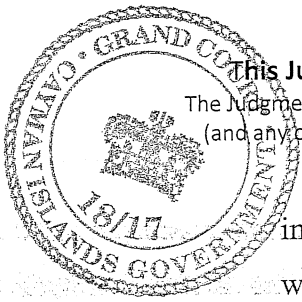
and where the Applicant grew up as a family. She stated that they had both agreed that it was in A's best interest for her to go to America. She stated that this was discussed between them often for years because the Respondent did not want to move back to the UK and that the fact that the parties were no longer together did not affect that they had both at one time felt it was in A's best interest for them to live in the US.

15. The Applicant set out a number of factors that she emphasized would make Boston a better environment for A. These included the schooling that would be available to her and opportunities for her further education and the Applicant's large and extended family. Affidavits of her parents EL and AL, her brother EL Jnr and her cousin by marriage BW, were filed in support. The Applicant's parents spoke of their love for A and their willingness to support her if the application for relocation was granted especially because they were now retired. EL Jnr. stated¹⁰:

"[A] has spent large periods of time in Massachusetts already. It is familiar to her and she has good connections here. I strongly believe that [the Applicant's] request to relocate is not selfishly motivated. [The Applicant] wants [A] to be with her and have a stronger family network than currently available to them. [A] is an only child and her cousins are her closest relatives. She would greatly benefit from being closer to them."

16. The Applicant confirmed at the second hearing that her family were still willing and able to provide the level of support that has been highlighted above should she relocate to Boston, to assist her and A to settle in as necessary.
17. The Applicant was confident, at the first hearing that that she would be able to find employment in Boston. At that time, she stated to the court that she had been offered a consulting job in Boston where she would be able to work flexible hours. She was unhappy with her work life in Cayman as there were no opportunities in her current line of profession

¹⁰ Affidavit sworn on the 14th November 2017



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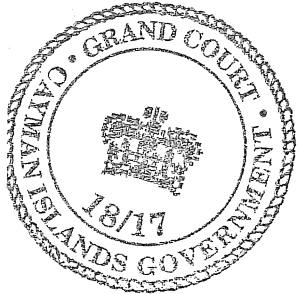
in Cayman. At the second hearing the Applicant testified to the court that she had been working doing small jobs since her return to the Cayman Islands in October 2018. However, her evidence was that these jobs did not provide sufficient income to sustain her and to afford her a reasonable quality of life in the Cayman Islands. The Applicant confirmed that she was able to continue to work remotely during the period of her absence from May – October 2018.

18. The Applicant offered that she had never been without employment while she lived in the United States and she was sure that if she returned to Boston that she would be able to work to support both herself and A. She referred to the position that she had previously advised the court that she intended to pursue, when she appeared on the first hearing, stating first that the job was still available. She did appear to contradict herself somewhat when she stated that she was still in discussion with relevant persons at the company while at the same time saying that if relocation was granted, she would be able to have a job immediately.
19. With regard to schooling, the Applicant presented to the court that A would be able to attend public school in Boston free of charge, a somewhat different situation to what obtains in the Cayman where she attends private school. She admitted that A was happy at her present school and that her experience had been very positive. However, she was unsure of plans for A's further education and the cost implications if she remained in Cayman. The Applicant pointed to scholarship opportunities that would be available to A should she move to Boston saying that A appeared to have great athletic potential and could take advantage of sporting scholarships. In her evidence this court noted that the Applicant admitted that she had not given much thought to how the move would impact A directly in terms of being able to transition to a new curriculum and to a school system which was very different from the system under which she is thriving in the Cayman Islands.
20. As referred to at paragraph 2 above, the first hearing was adjourned due to the Applicant's health. This issue is one of the most significant on this application as it would directly

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affect A's welfare, both from the point of view of her interactions with the Applicant as well as the Applicant's ability to ensure A's best interests. This factor was recognized by the Applicant whose evidence at the first hearing was as follows:



"We would still be here today [dealing with this application] if I weren't sick. The fact that I am sick can't be ignored, it is very important and it directly affects my daughter and how she sees me and how I am able to parent..."

21. At the first hearing it was clear to the court that the Applicant was dealing with a complex mix of medical and psychological issues. At paragraph 31 of her affidavit in support of the application for relocation the Applicant set out as follows:

"31. I am finding it increasingly difficult to remain here because of lack of emotional, psychological, financial and physical support. I have tried to make it work in Cayman for many years now but things are progressively getting worse and I have been sick for a number of years now. I have contracted, mono, high blood pressure, sleeping problems, sore throats, earaches, neck and back pain, and terrible migraines. I had on-going tests for Lyme disease, which had been inconclusive. I have been treated for anxiety and depression. I am awaiting a formal diagnosis from a psychiatrist."

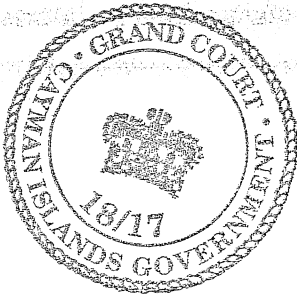
22. The Applicant described that her symptoms and stress were directly related to her situation in the Cayman Islands. She further stated then: *'Whatever happens on this application, I am going. I don't have a chance. It is not working. I have to do something. Her moving with me is the best thing for her.'*

23. At the first hearing the psychiatric evaluation report of Dr. Lockhart was before the court. Dr. Lockhart found the following as regards the Applicant's mental status:

"Her symptoms and presentation confirm a diagnosis of an Adjustment Disorder Mixed with Depression and Anxiety symptoms. Post traumatic

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symptoms are also present with chronic stress related actions. Her desire persists to be productive, to care for her daughter and to resolve amicably her relocation issue. She recognizes the role that her estranged husband plays in her daughter's life and wants this relationship to flourish.

.....

It is my medical opinion with a reasonable degree of certainty that [the Applicant] will require medication management consistently for the next 12 to 36 months with a reassessment at that time for ongoing requirements. Medication interventions should be focused on reducing her lethargy and emotional/mood symptoms.

.....

Her clinical course and symptoms are a direct result of a dysfunctional relationship with her husband, the chronic nature of their inability to reach a relocation settlement, and the limitations on her ability to be productive occupationally. It is evident that negative emotional symptomology as a result of the chronicity of the above mentioned complex presentation is severely affecting [the Applicant]'s functioning.

[The Applicant] will require Counseling/Psychotherapy in order to modulate symptoms, increasing coping skills and to aid her in restructuring her life. This treatment would be greatly enhanced with ongoing psychiatric intervention in order to continue the process of medication, titration, adjustment and reassessment.

.....

In my professional opinion, her prognosis is fair at best; if the treatment plans of combination therapy are started as soon as possible, with a mature resolution by both parties relating to relocation."

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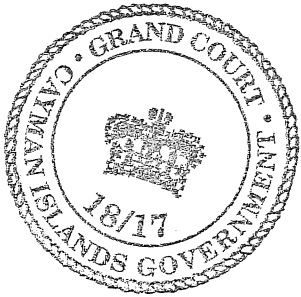
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24. At the time of the 2nd hearing the Applicant provided the court with an updated medical report from Dr. Lockhart. The medical report dated the 2nd April 2019 described the Applicant's condition as follows:

“Depressive symptoms are still present, no hopelessness or suicidal ideations, no psychotic features, she is defending herself in court due to present financial challenges, and that is an additional stressor on her functioning. She expressed a willingness to compromise, is more than willing to have her daughter spend time in Cayman with her father but feels that she would be better served by being able to attend school in the USA and reside with her mother. Supportive interventions made to assist this Pt is hearing and coping. Medications adjustment made and compliance discussed.

Middle phase of therapy, continued monitoring of depressive symptoms on agreed upon schedule. Linking depressive symptoms to current problematic interpersonal functioning. Working towards resolution through improved communication and recognition, and expression of associated effect. Active engagement in and development of the interpersonal network to support and facilitate change required in the areas of clinical focus.

25. The Doctor noted that the Applicant would need to continue with prescribed medications.
26. The Applicant related her view of her current medical condition at the second hearing. She stated that she had availed herself of the physiotherapy sessions suggested by Dr. Lockhart since she last appeared before the court in May 2018. She attended these sessions in Boston between July and November 2018. She related to the court that since she had been back on Island from early November 2018, that she saw Dr. Lockhart once a month and that these sessions were then changed to once every 3 months. The Applicant stated that she was actually toward the end and not the middle of therapy and that the Doctor's report





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reflected the fact that there could be no resolution of her present symptoms until her situation changed, no significant recovery until significant changes were made.

27. The Applicant related that she would be able to continue these sessions if she relocated to Boston. She went further to state, in terms of her prognosis, that extreme stress manifests itself into physical problems such as extreme migraines, complete exhaustions, sleeping for long periods and not feeling well. She admitted that she was not able to function well under the conditions as they presently were, without support.

The Respondent's Opposition to the Application to Relocate

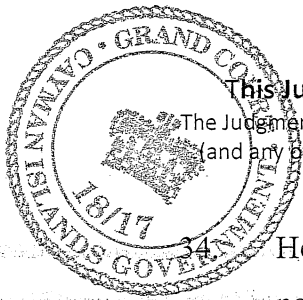
28. The Respondent resists the application to relocate. He denies that there was a longstanding agreement to relocate to the US and in any event states that the discussions were only ever in the context of the parties moving there as a family unit and not centered on the Applicant and A moving there independently of him. In the present circumstances where the parties have now separated, the Respondent's evidence was that his relocation to the United States would be very difficult from an immigration standpoint.
29. Conversely the Respondent raised with the court that the Applicant could remain and work in the Cayman Islands. There was no impediment to her doing so. Counsel for the Respondent asked the court to note that the Applicant was entitled to remain and work in the Cayman Islands since there were no immigration restrictions preventing her from doing so. He stated that she appeared to have a historical resistance to working in the Cayman Islands and queried whether the Applicant had in fact exhausted all opportunities to obtain salaried employment in the Cayman Islands.
30. Regarding the Applicant's employment prospects in Boston, Counsel for the Respondent stated that the Applicant had provided no full account of the job that was available to her in the US. Arising from this the Respondent invited the court to consider this fact in the context of the court's determination of how the salary and benefits available to the

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Applicant if she did take up this employment would impact A and how certain could the court be of these without concrete evidence of the Applicant's actual employment.

31. The Respondent took issue with the Applicant with regard to the need for family support and her assertions regarding the level of support that the Applicant and A would receive if they relocated to Boston. The Respondent emphasized that the need for support arose due to the Applicant's medical issues and not regarding A directly. As a result, the Applicant's need for support should not be viewed as a reason to relocate with A. The Respondent also reminded the court that he had been seeking to have increased contact with A and that this had been resisted by the Applicant for some time. He also highlighted that he was well able to take care of A and that he had done so for extended periods when the Applicant had been absent from the Island and met all of her needs including the period between July to November 2018 when the Applicant had been absent from the Cayman Islands attending to her health concerns.
32. The Respondent noted at the first hearing: *"even when living in the Cayman Islands, the [Applicant] has been able to attend many of her major family gatherings including Christmas, Thanksgiving, birthdays and other events. ...The [Applicant] spends most of the summer at her parents' home or summer cottage nearby and I fly to the UK via Boston, USA to enable handover of [A] between our summer vacations at extra expense to me and with an additional 'layover' and vacation day used for me. However, I have done this to facilitate what I believe to be in [A]'s best interests."*
33. On the issue of the Applicant's medical condition, the Respondent was concerned that the Applicant was still at the mid-stage of her treatment. Counsel for the Respondent stated that the court should be concerned at what he termed the paucity of evidence to support the Applicant's medical conditions; that the Applicant has not placed before the court any evidence that she had in fact embarked on the recommended psychotherapy sessions while she had been in the United States.



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34 He also invited the court to be cautious in its approach to Dr. Lockhart's updated report, noting especially that the report stated that the Applicant was only at the middle phase of therapy, that there needed to be continued monitoring of her depressive symptoms and that these symptoms were linked to what the doctor termed "*current problematic interpersonal functioning*." Counsel therefore asked the court to consider whether the Applicant was in the better position to look after A's needs and interest. He also asked the court to consider whether the Applicant had satisfied the court that the Applicant had been able to take full advantage of Dr. Lockhart's original recommendations; whether the court was satisfied that there was sufficient evidence before it that these had actually been followed.

THE WELFARE REPORT

35. The court had the benefit of a Welfare Report which was provided at the first hearing. The Welfare Report was quite comprehensive and was prepared with the aid of home visits, fact-to-face interviews, school visits and review of the documentation provided to the Welfare Officer. The court is mindful that this Report was prepared for the first hearing and has not been updated. The parties did not indicate that the factors that the officer had considered had changed significantly between the two hearings and in any event any changes and their effects on this Reports' findings could be considered by the court from their evidence. No significant changes with respect to A's education or physical condition were noted and, as has been detailed above, there were positive agreed changes to the level of her contact with the Respondent.
36. This court did not find that it would be useful to call A to give evidence on this application. She is still a young child and it is apparent to this court that she is loved by and loves both of her parents. The court was concerned not to put any undue pressure on A which could have caused her to believe that she was choosing one or other of her parents. This court was of the opinion that there was sufficient material available from both parties to enable the court to conduct this application without A's direct input.

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37. The Welfare Officer stated her findings with reference to the Welfare Checklist pursuant to the *Children Law*. [All references to the child by name are indicated as “A”]. The more salient aspects of her findings are as follows:



“a) The wishes and feelings of the child concerned –

By her own suggested rating scale, [A] rated the fun she has in Cayman at a 10 and moving to Boston at a 4, 5 the most. Based on this, it is clear that she prefers living in Cayman to living in Boston. Further, she stated that she prefers warm weather and Boston is known for its cold weather. [A] also made it clear that she would not want to be away from either parent for any long period of time. She shared that she considers a month a long enough period.

(b) The child’s physical, educational and emotional needs –

Physical – [A]’s physical need for food and shelter is being met by her parents. She is also reportedly in good physical health...

Educational – [A] is thriving in her school. She was described as a “rock star” and the school had no concerns about her academics or behaviour. [A] also indicated that she likes school and loves learning. She seems to be above average intelligence.

Emotional – [A] presents as an emotionally stable young lady. She seems happy with her life and the fun she has with her friends. She did not point out any area of dissatisfaction. She was playful and amusing during her interview. It was also clear that she shares a bond with both parents.

c) The likely effect on the child if any change in her circumstances –

It can be accepted that any change in a child’s routine can be impactful. In this case, [A] will move from a comfortable, predictable life, to reside in what is essentially a foreign country. While she has family in Boston and

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she will be with her mother, her life is in Cayman, she was born on the Island and she is legally a Caymanian.

(d) The age, sex, religious persuasion, background and any characteristic of hers which the Court considers relevant –

[A] ...expresses herself well. She also presents as fun loving and kind. She clearly places great value on her relationship with her friends, which should be considered when making a decision about her life.

(e) Any harm which the child have suffered or is a risk of suffering –

[A] is well adjusted, well-mannered and a naturally happy girl. She seems to be handling her parent's breakup in a commendable manner. She is in a safe environment and there is no imminent risk of harm observed by this writer.

(f) How capable each of the child's parents, and any other person in relations to whom the court considers the question to be relevant, is of meeting her needs –

Both parents are capable of meeting [A]'s needs: with the exception that [the Applicant] is unemployed so could not meet her financial need independently.

Assessment – Is the application genuine?

By the information provided, [the Applicant] does in fact have a genuine need to relocate. She is unhappy in Cayman, which is due to a number of factors.

.....

[The Applicant] reiterated that all she wants is relocation, she is also confident that her quality of life and wellbeing would improve if she returned to Boston. However, while this may be true for her, it is apparently

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not the case for [A] as the majority of the reasons she needs to move, have nothing to do with [A].

Is the Application Realistic?

The application can be considered realistic as [the Applicant] will be returning to the place she grew up. She will return to her parents' house, they are happy to have her and are supportive of her.

[The Applicant]'s proposed contact between [A] and [the Respondent] is also realistic. It is the most feasible arrangement that can be put in place when living in separate countries; as the child's school life should not be interrupted.

Is Relocation the best interests of [A]?

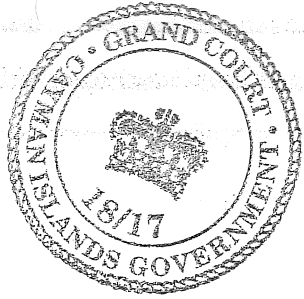
Education: *[The Applicant] believes that [A] will have better educational opportunities in Boston. [A] is now meeting and exceeding expectations in school. Therefore, moving her to a school in Boston will not improve her academics or behaviour because she is currently doing very well in those areas at her present school.*

[A] going to school in Boston will also deny her father participating in her school life and it is important that both parents do so.

Family/Emotional support:

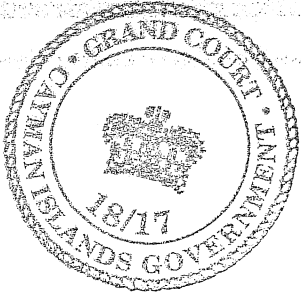
Both [the Applicant] and [the Respondent] have chosen to leave their homeland and families and charted a life for themselves in a foreign country. They started a family in the Cayman Islands and so [A]'s experience of family involves them only. They separated when she was young resulting in an even more fragmented experience of family for her. The argument that she should move to Boston to be with family would in fact take her away from the family she knows.

Relationship with parents:



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[A] has a bond with her parents and enjoys her time with them. Both parties had positive things to say about each other as parents, especially [the Respondent] about [the Applicant]. Both parents are clearly devoted to [A] and she should not be deprived of parents' love, support, care and protection. If [A] moves to Boston, [the Respondent] will be denied the opportunity to play a significant part in the upbringing of his daughter, which would be unfortunate as he is an interested and capable parent.

....

Finally, the Applicant outlined genuine reasons why she needs to move away and it does not appear that it is because she wants to end contact between [the Respondent] and T. However, based on the history of [the Applicant], taking [A] to Boston and trying to remain there without [the Respondent's] consent, [his] concerns are well founded and must be considered when arriving at a decision in this matter.

Effect on [the Applicant] if application is denied

While it is clearly in the Applicant's best interest to relocate, it was not found to be in [A]'s. [A]'s best interest much be considered apart from [the Applicant's]. Parents are tasked with making sacrifices for the children and to put the interests of the children [above] their own, no matter how hard that may be.

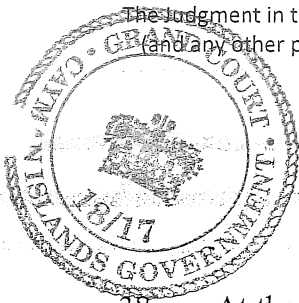
[The Applicant] has the option of making the best of her situation in Cayman. This writer does not foresee the refusal of this application impacting on [the Applicant's] relationship with [A] and on her capability as a parent.

Recommendation

The Court is required to operate on the premise of "the best interest of the child is paramount". Therefore, while the ... application is determined to be genuine and realistic, it does not appear that it would be in [A]'s best interest. [A] leaving now

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would be an unnecessary disruption in her life. It is therefore being recommended that [the Applicant's] leave to remove application is denied."

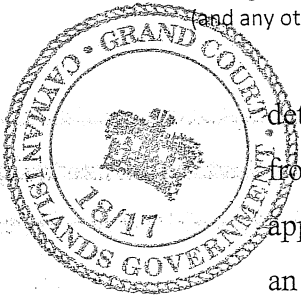
38. At the first hearing the Applicant raised issues which this court has taken into account in its consideration of the weight to be attached to the Report's findings. Specifically, the Applicant raised concerns that the Welfare Report was based on very few interviews and that the court should be mindful when evaluating the officer's opinions and the conclusions reached in the report that the officer did not know A or the parties. The Applicant also formed the opinion that the Welfare Officer disliked the United States and had a negative opinion of the US which may have tainted her opinion and evaluation.
39. The Respondent urged the court to adopt the recommendation in the Welfare Report as being one that was a cogent and strong conclusion.
40. This court has had regard to the findings set out in the Welfare Report, taking into account the criticisms raised by the Applicant. There is nothing in the Report that causes this Court to find that that any personal opinion that the officer may have with regard to the United States has influenced her findings. Her findings are primarily supported by her observations and interactions with the parties and with A. This court does bear in mind the Applicant's concerns with regard to the fact that the officer would not know the parties and A beyond her interviews, however that is a feature of any welfare report. There is nothing that has been drawn to the attention of the court in particular to cause a finding that the officer's findings are not reliable. The Report presents the court with a compelling view of A and the officer's findings accord with those of the court on the extent of the parties' bond with A as well as their motivations for the positions that they have adopted on this application before the court.

Conclusions

41. This court has expressed to the parties before and during the course of the hearing that they are both well placed and could even be considered to be in a better position to together

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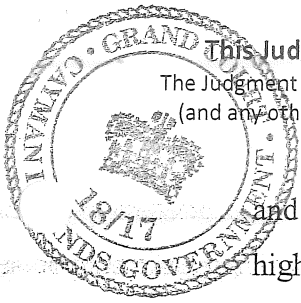


determine what is in the best interest of A than this court. This superior position arises not from the application of *the Law* and guiding principles, but from the love that it is so apparent that they both have for A. However, they have been unable to together come to an agreement that can satisfy both of them. It remains for the court having the child's welfare as its paramount consideration to unflinchingly sift the evidence before it and take a decision with which one party will certainly disagree.

42. There has been extensive evidence placed before the court. Most of that evidence has been arguments and counter arguments about what either party may have said in the past. This court is clear the issues it must determine. The facts surrounding those issues are not to a large extent in dispute, apart from the issue of whether there was agreement to make efforts to move to Boston either before or after A's birth. It is for the court to determine the extent to which the facts impact its decision on the application and the weight to be attached to these upon consideration of the Welfare Checklist. For this reason, extensive details of the parties' evidence are not set out in this judgement although all relevant facts have been considered in reaching a decision on this application

43. The Applicant wants to leave the jurisdiction. She has offered to the court that it is the position in which she found herself in Cayman during her relationship and after separation from the Respondent that has contributed and continues to be the cause of her physiological/psychiatric issues. She cannot continue here as she is unable to find the work that she wants to do or is best qualified for, she cannot enjoy a standard of living that she would like, she cannot provide for A as she would like and she is convinced that she would be able to fulfil all of these were she to move to Boston and the bosom of her family. For the Applicant her wishes are intimately intertwined with what is best for A. She is A's primary caregiver. A is her only child and what is best for her must also be best for A.

44. The Applicant does not make the latter assertion lightly, she has offered the court evidence that A would be able to go to a bigger school, enjoy opportunities for sport and scholarships, be able to enjoy her extended family including her grandparents, aunts, uncles



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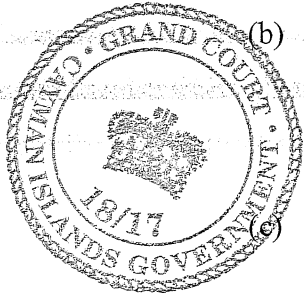
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and cousins and have access to medical and health care with minimum fuss. She has also highlighted the bond between herself and her daughter emphasizing her involvement in A's schooling and extracurricular activities and the closeness of their relationship.

45. For the Respondent, A is also his only child. He would like the status quo to remain. In circumstances similar to those referred to in *RE Y (LEAVE TO REMOVE FROM THE JURISDICTION)*, he is only seeking sole custody of A so that she can remain in the Cayman Islands. There is no wish to deprive the Appellant of A and her relationship with her. However, the Respondent's argument is that A is right where she needs to be. The Respondent points to the fact that Cayman is the only home that A has ever known. With the efforts of both parents, A is growing into a well-adjusted happy child. She is doing well in school, has many friends, continues to be outgoing and one can almost feel the *joie de vivre* that A seems to present, from her parents' accounts, and the reports presented to the court.
46. The Respondent did not seek to downplay the positives of A being closer to her extended family in Boston, however, he offers to the court that she is his only family here and that the bond of father and daughter should be the bond that the court seeks to preserve above any relationship with her extended family. He has expressed real concerns with whether the Applicant would foster and promote his relationship with A should the application to relocate be granted. The Respondent highlighted that should A be removed from the jurisdiction now that she would lose her entitlement to attain Caymanian Status when she turns eighteen, which should be her right.
47. The welfare checklist
 - (a) *A's wishes and feelings*: A had previously expressed that she preferred the Cayman Islands to Boston. This court has considered the Applicant's evidence of A speaking about moving to America. It is not clear that that these are all A's independent wishes. A's age is a factor that this court has taken into account regarding the weight to be accorded her wishes and feelings on this application.

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(b) ***The child's physical, educational and emotional needs:*** These are all met by both parents and the court is satisfied that they will continue to be met if A remains in the Cayman Islands.

The likely effect on A of any change in her circumstances: These are unknown. The court does have concerns with her educational needs and her adjustment to a larger public school as she would need to do if she is to move to Boston. The evidence presented by the Applicant does not confirm that the education that A would receive in Boston is superior to the education that she receives in the Cayman Islands.

The court is concerned that A would be affected if she cannot maintain a close relationship with the Respondent. They enjoy a firm bond now. The Applicant states that A would adjust because she will have family around her and makes friends easily.

(d) ***The age, sex, background and any circumstances of hers which the court considers relevant:*** A is now 10 years of age. Her relationship with her mother will become increasingly important as she approaches puberty.

(e) ***Any harm which she has suffered or is at risk of suffering:*** No specific harm has been identified except that A will be leaving all that she has ever known and the effect of this change on her is difficult to ascertain.

(f) ***How capable each of her parents are in meeting her needs?*** From the evidence presented the Respondent can adequately meet A's needs. The Applicant cannot do so without financial and emotional support. The proposals that she has put before the court are not concrete. They will obviously depend on what happens if the Applicant does actually move to America.

The court has some concern that the Applicant is still undergoing psychiatric treatment and will have to continue to do so for some time. This is especially relevant because of the effects of her diagnosis that the Applicant has herself

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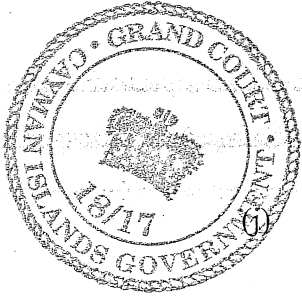


described that she is still experiencing. In her final submissions to this court, the Applicant was very forthright about this issue. She stated: "*It was determined by Doctor Lockhart that 12-36 months is the time needed to recover presented in his report in my exhibits. While I am significantly better, I admit I am not at my best. It has not even been a year, I begin therapy once I returned home to the US last year which started in July.*" However, this factor alone is not determinative of the issue whether the application for relocation should be granted.

- (g) *Is the mother's application genuine in the sense that it is not motivated by some desire to exclude the Respondent from A's life?* This court has heard and considered the Applicant. The mother's application is genuine. The basis of the application is not to exclude the Respondent.
- (h) *Is the father's opposition motivated by a genuine concern for the future of A's welfare or is it driven by some ulterior motive?* The Respondent's opposition to the application is motivated by genuine concern. There is nothing before this Court to cause the court to find that the Respondent has any ulterior motive in opposing the application. There is ample evidence that the Respondent wants the Applicant to continue to play a significant part in A's life. Although the parties had explored moving to the United States while they were married, there was no agreement of the Applicant and A to move to Boston independent of the Respondent.
- (i) *What is the extent of the detriment to Father and his future relationship with A if the application was granted?* The relationship between the Respondent and A would be greatly affected if the application was granted. It is obvious that the breakdown of the relationship between the Applicant and the Respondent may cause the Respondent to be excluded from some aspects of A's upbringing if the application is granted. There is no evidence of a close relationship between the Respondent and the Applicant's parents who would now be very much concerned with A's welfare and future. The findings in the Welfare Report that: "*If [A] moves to Boston, [the Respondent] will be denied the opportunity to play a significant part*

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in the upbringing of his daughter, which would be unfortunate as he is an interested and capable parent.” is relevant.

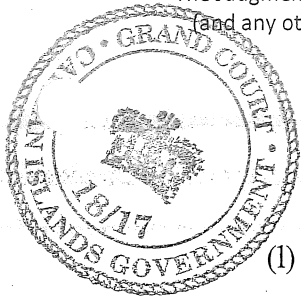
To what extent would the detriment to Father if the application was granted be offset by extension of the Child’s relationship with the maternal family and if applicable, homeland? A would be able to strengthen her relationship with her maternal family and have a greater appreciation of her Mother’s homeland. The Respondent would have the opportunity for contact with A in Boston and in the Cayman Islands. However, given the nature of the relationship between A and the Respondent and the importance of that bond for A and the Respondent, the extension of A’s relationship with her maternal family would not greatly offset the detriment to the Respondent which would arise if the application for relocation is granted.

- (k) *Is the Mother’s application realistic and founded on practical proposals, well researched and investigated?* In *FS v JF*¹¹, Hall J. expressed the view that the party whose application for relocation had been granted had presented a well-conceived and well researched plan for relocation. This factor lent great support to the outcome of that application. While it is obviously desirable that a party seeking relocation is able to present a coherent approach to the issue, this court does not fault the Applicant *per se* because she did not have all the “*her ducks lined up in a consecutive order*” as it were in terms of the level of detail presented. Indeed, the Applicant was well able to explain what her intentions were with regard to A’s education, living arrangements, extracurricular activities and increased familial interactions. However, this Court must closely examine these individual areas to find whether what has been presented taken as a whole would better serve the interests of A. In determining how realistic and practical the Applicant’s proposals are, the fact that these proposals do not convey a level of certainty essential to A’s

¹¹ FAM 0064 of 2017

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adjustment and welfare if she is uprooted from her present life, is of greater concern to this court.

(1) ***What would be the impact on Mother of a refusal of her realistic proposal?*** The Applicant would be negatively affected by a refusal of her application to relocate. It is obvious to this court as it has been from the first hearing that she sees relocation as being the only means by which she can become fully well and ultimately improve her life and she wants to have her daughter with her when she does so.

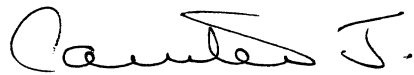
48. The court is guided by *the Law* and the many principles that have come out of the case law regarding the determination of an application to relocate. In *B v B* at the Court of Appeal, Chadwick P. noted that: “*the competition in a relocation case is likely to be between declining the application for relocation because the children’s interests are best served by promoting stability, continuity and the preservation of certain relationships, as against allowing it on the ground that the interests of the children are thereby better served.*”
49. Living in the Cayman Islands is a very unique experience for a child. It is sometimes referred to as living in a bubble, but it is a protective secure bubble in which a child can thrive and enjoy childhood. All of the evidence before the court is that A’s best interests have been provided for and continue to be provided for in the Cayman Islands. She is very well settled in school, she has a group of friends, she has loving and close relationships with both parents here and she has never known another home. There is nothing that has been put before me that causes me to doubt that the stability, continuity and relationships formed here have vastly contributed to A’s wellbeing and formed her well-rounded and well-grounded personality.
50. The Applicant has intertwined her desire to leave the jurisdiction with what is in the best interest of A, because essentially, she believes that her daughter should be with her. She could make it work if she was. However, that is not the test on this application. It is A’ interests that this court must prioritize above all else. There is nothing that has been offered

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on the evidence to cause this court to find that A's interests would be better served if she were to be relocated to Boston. The lack of certainty surrounding the Applicant's plans as well as this court's concerns surrounding the Applicant's medical/psychiatric issues weight heavily in the balance against relocation. While relocation may clearly be in the Applicant's best interests, they are not in A's best interests. There is no sufficient reason for an abrupt disruption to her life at this time.

51. Accordingly, the application to relocate to Boston is dismissed.



**JUSTICE MARLENE I. CARTER
ACTING JUDGE OF THE GRAND COURT**

